

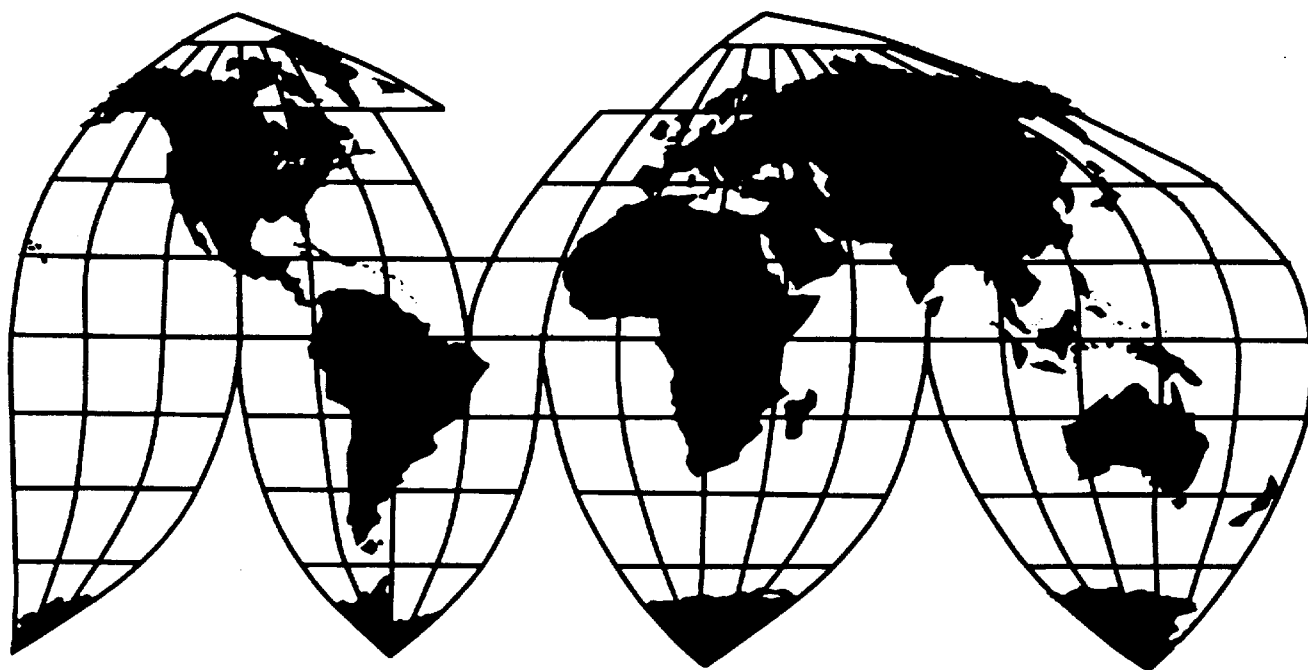
# Polychloroprene Rubber From Japan

Investigation No. AA-1921-129 (Second Review)

Publication 3786

June 2005

**U.S. International Trade Commission**



Washington, DC 20436

# U.S. International Trade Commission

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**Note.**—Information that would reveal confidential operations of individual concerns may not be published and therefore has been deleted from this report. Such deletions are indicated by asterisks.

# UNITED STATES INTERNATIONAL TRADE COMMISSION

Investigation No. AA1921-129 (Second Review)

## POLYCHLOROPRENE RUBBER FROM JAPAN

### DETERMINATION

On the basis of the record<sup>1</sup> developed in the subject five-year review, the United States International Trade Commission (Commission) determines, pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. § 1675(c)) (the Act), that revocation of the antidumping finding on polychloroprene rubber from Japan would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.<sup>2 3</sup>

### BACKGROUND

The Commission instituted this review on July 1, 2004 (69 FR 39961) and determined on October 4, 2004 that it would conduct a full review (69 FR 61403, October 18, 2004). Notice of the scheduling of the Commission's review and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the *Federal Register* on December 30, 2004 (69 FR 78474). The hearing was held in Washington, DC, on May 3, 2005, and all persons who requested the opportunity were permitted to appear in person or by counsel.

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<sup>1</sup> The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR § 207.2(f)).

<sup>2</sup> Vice Chairman Okun and Commissioner Hillman dissenting.

<sup>3</sup> Commissioner Pearson did not participate in this determination.





## VIEWS OF THE COMMISSION

Based on the record in this five-year review, we determine under section 751(c) of the Tariff Act of 1930, as amended (“the Act”), that revocation of the antidumping finding covering polychloroprene rubber (“PCR”) from Japan would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.<sup>1 2</sup>

### I. BACKGROUND

In October 1973, the Tariff Commission determined that an industry in the United States was being injured by reason of imports of PCR from Japan that were being sold at less than fair value.<sup>3</sup> The Treasury Department (“Treasury”) published an antidumping finding on December 6, 1973.<sup>4</sup>

In July 1999, the Commission completed its first five-year review and determined that revocation of the finding on PCR from Japan would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.<sup>5</sup>

The Commission instituted the present review on July 1, 2004.<sup>6</sup> The Commission received responses to its notice of institution from the domestic PCR producer Dupont Dow Elastomers (“DDE”), and from four U.S. purchasers of PCR (Carlisle Power Transmission Products, Chardon Rubber Co., Excel Polymers, LLC, and Gates Corporation).

On October 12, 2004, the Commission determined that the domestic interested party response was adequate, and that the respondent interested party response was inadequate, but other circumstances warranted conducting a full review.<sup>7</sup> The three known Japanese producers of PCR provided very limited information in response to the Commission’s questionnaire in this review: one producer provided information as to its exports by destination; and the other two producers did not respond to the Commission’s questionnaire.<sup>8</sup>

DDE and the Gates Corporation (“Gates”), a domestic purchaser of PCR that was opposed to the continuation of the finding but was not an interested party, appeared at the hearing and submitted prehearing and posthearing briefs.

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<sup>1</sup> Vice Chairman Okun and Commissioner Hillman dissenting. See Dissenting Views of Vice Chairman Okun and Commissioner Hillman. They join in Sections I and II of these views, except as otherwise noted.

<sup>2</sup> Commissioner Pearson did not participate in this determination.

<sup>3</sup> Polychloroprene Rubber From Japan, Inv. No. AA1921-129, USITC Pub. 622 (Oct. 1973).

<sup>4</sup> 38 Fed. Reg. 33593.

<sup>5</sup> Polychloroprene Rubber From Japan, Inv. No. AA1921-129, USITC Pub. 3212 (July 1999). Commissioners Crawford and Askey dissented and made negative determinations.

<sup>6</sup> 69 Fed. Reg. 39961 (July 1, 2004).

<sup>7</sup> 69 Fed. Reg. 61403 (Oct. 18, 2004) (Chairman Koplan dissenting); see also Explanation of Determination on Adequacy, Confidential Staff Report (“CR”) and Public Staff Report (“PR”) at Appendix A.

<sup>8</sup> CR at IV-3, PR at IV-2.

## II. DOMESTIC LIKE PRODUCT AND INDUSTRY

### A. Domestic Like Product

In making its determination under section 751(c), the Commission defines the “domestic like product” and the “industry.”<sup>9</sup> The Act defines “domestic like product” as “a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this subtitle.”<sup>10</sup> In its final five-year review determination, the Department of Commerce (“Commerce”) defined the subject merchandise as

polychloroprene rubber, an oil resistant synthetic rubber also known as polymerized chlorobutadiene or neoprene, currently classifiable under items 4002.42.00, 4002.49.00, 4003.00.00, 4462.15.21 and 4462.00.00 of the Harmonized Tariff Schedule (HTS).<sup>11</sup>

The product subject to Commerce’s scope is a synthetic rubber, that is available in both dry polymers and liquid (aqueous) latex grades, and that is used in thousands of diverse applications.<sup>12</sup>

Reviewing the record and taking into account the parties’ positions on this issue, we see no basis for departing from the domestic like product definition in the first five year review.<sup>13</sup> There is no evidence in the record of this review with respect to the factors the Commission examines in its domestic like product analysis that supports revisiting the definition of the domestic like product. Therefore, for the reasons stated in the first five-year review,<sup>14</sup> we continue to define a single domestic like product coextensive with the scope definition.

### B. Domestic Industry and Related Parties

Section 771(4)(A) of the Act defines the relevant industry as the “domestic producers as a whole of a like product, or those producers whose collective output of the like product constitutes a major proportion of the total domestic production of that product.”<sup>15</sup> In defining the domestic industry, the Commission’s general practice has been to include in the industry producers of all domestic production of the like product, whether toll-produced, captively consumed, or sold in the domestic merchant market, provided that adequate production-related activity is conducted in the United States.<sup>16</sup>

In defining the domestic industry in this review, we considered whether any producers of the domestic like product should be excluded from the domestic industry pursuant to the related parties provision in section 771(4)(B) of the Act. That provision of the statute allows the Commission, if

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<sup>9</sup> 19 U.S.C. § 1677(4)(A).

<sup>10</sup> 19 U.S.C. § 1677(10). See Nippon Steel Corp. v. United States, 19 CIT 450, 455 (1995); Timken Co. v. United States, 913 F. Supp. 580, 584 (Ct. Int’l Trade 1996); Torrington Co. v. United States, 747 F. Supp. 744, 748-49 (Ct. Int’l Trade 1990), aff’d, 938 F.2d 1278 (Fed. Cir. 1991). See also S. Rep. No. 96-249 at 90-91 (1979).

<sup>11</sup> 69 Fed. Reg. 64276 (Nov. 4, 2004).

<sup>12</sup> Confidential Staff Report (“CR”) at I-13, Public Staff Report (“PR”) at I-12.

<sup>13</sup> Because the Antidumping Act, 1921, did not contain a “like product” provision, the Commission did not make a like product determination per se in its original determination. Instead, it stated that the “domestic industry” at issue consisted “of the facilities in the United States devoted to the production of polychloroprene rubber.” USITC Pub. 622 at 3.

<sup>14</sup> USITC Pub. 3212 at 4-6.

<sup>15</sup> 19 U.S.C. § 1677(4)(A).

<sup>16</sup> See, e.g., United States Steel Group v. United States, 873 F. Supp. 673, 682-83 (Ct. Int’l Trade 1994), aff’d, 96 F.3d 1352 (Fed. Cir. 1996).

appropriate circumstances exist, to exclude from the domestic industry producers that are related to an exporter or importer of subject merchandise, or which are themselves importers. Exclusion of such a producer is within the Commission's discretion based upon the facts presented in each case.<sup>17</sup>

A related parties issue arises with respect to DDE, the only current producer of the domestic like product. For part of the review period (from 1999 until November 2002) DDE was part of a \*\*\* joint venture in Japan with the Japanese PCR producer Showa Denko K.K. The joint venture manufactured and exported PCR to the United States, and DDE imported this product.<sup>18</sup> Consequently, DDE is a related party, by virtue of its affiliation with a Japanese exporter and its importing activity during the review period.

DDE's imports never amounted to more than \*\*\* percent of its domestic PCR production.<sup>19</sup> The company's small amounts of subject imports suggest that its interests lie principally in domestic production. There is no evidence that DDE was shielded from any injury that might have been caused by subject imports by virtue of its corporate relationship to the joint venture company in Japan, or by virtue of its importing activity. DDE is also the only domestic producer of PCR during the review period. We accordingly find that appropriate circumstances do not exist to exclude DDE as a related party.<sup>20</sup>

### **III. REVOCATION OF THE FINDING ON PCR WOULD BE LIKELY TO LEAD TO CONTINUATION OR RECURRENCE OF MATERIAL INJURY WITHIN A REASONABLY FORESEEABLE TIME**

#### **A. Legal Standard**

In a five-year review conducted under section 751(c) of the Act, Commerce will revoke an antidumping or countervailing duty order or terminate a suspended investigation unless: (1) it makes a determination that dumping is likely to continue or recur, and (2) the Commission makes a determination that revocation of the antidumping order "would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time."<sup>21</sup> The SAA states that "under the likelihood standard, the Commission will engage in a counter-factual analysis; it must decide the likely impact in the reasonably foreseeable future of an important change in the status quo – the revocation or termination of a proceeding and the elimination of its restraining effects on volumes and prices of imports."<sup>22</sup> Thus, the likelihood standard is prospective in nature.<sup>23</sup>

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<sup>17</sup> See, e.g., *Allied Mineral Products, Inc. v. United States*, \_\_\_ Fed. Supp.2d \_\_\_, Slip Op. 04-139 (Ct. Int'l Trade, Nov. 12, 2004); *Torrington Co. v. United States*, 790 F. Supp. 1161, 1168 (Ct. Int'l Trade 1992), *aff'd without opinion*, 991 F.2d 809 (Fed. Cir. 1993); *Sandvik AB v. United States*, 721 F. Supp. 1322, 1331-32 (Ct. Int'l Trade 1989), *aff'd without opinion*, 904 F.2d 46 (Fed. Cir. 1990); *Empire Plow Co. v. United States*, 675 F. Supp. 1348, 1352 (Ct. Int'l Trade 1987).

<sup>18</sup> CR at I-20, PR at I-15.

<sup>19</sup> CR/PR at Table III-4.

<sup>20</sup> The same related party issue arose in the first five-year review. The Commission found that appropriate circumstances did not exist to exclude DDE. USITC Pub. 3212 at 6-7.

<sup>21</sup> 19 U.S.C. § 1675a(a).

<sup>22</sup> SAA, H.R. Rep. No. 103-316, vol. I, at 883-84 (1994). The SAA states that "[t]he likelihood of injury standard applies regardless of the nature of the Commission's original determination (material injury, threat of material injury, or material retardation of an industry). Likewise, the standard applies to suspended investigations that were never completed." *Id.* at 883.

<sup>23</sup> While the SAA states that "a separate determination regarding current material injury is not necessary," it indicates that "the Commission may consider relevant factors such as current and likely continued depressed  
(continued...)

The U.S. Court of International Trade has found that “likely,” as used in the sunset review provisions of the Act, means “probable,” and the Commission applies that standard in five-year reviews.<sup>24 25</sup>

The statute states that “the Commission shall consider that the effects of revocation or termination may not be imminent, but may manifest themselves only over a longer period of time.”<sup>26</sup> According to the SAA, a “‘reasonably foreseeable time’ will vary from case-to-case, but normally will exceed the ‘imminent’ time frame applicable in a threat of injury analysis [in antidumping investigations].”<sup>27 28</sup>

Although the standard in a five-year review is not the same as the standard applied in an original antidumping investigation, it contains some of the same fundamental elements. The statute provides that the Commission is to “consider the likely volume, price effect, and impact of imports of the subject merchandise on the industry if the orders are revoked or the suspended investigation is terminated.”<sup>29</sup> It directs the Commission to take into account its prior injury determination, whether any improvement in the state of the industry is related to the order or the suspension agreement under review, whether the industry is vulnerable to material injury if the orders are revoked or the suspension agreement is

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<sup>23</sup> (...continued)

shipment levels and current and likely continued [sic] prices for the domestic like product in the U.S. market in making its determination of the likelihood of continuation or recurrence of material injury if the order is revoked.” SAA at 884.

<sup>24</sup> See NMB Singapore Ltd. v. United States, 288 F. Supp. 2d 1306, 1352 (Ct. Int’l Trade 2003) (“‘likely’ means probable within the context of 19 U.S.C. § 1675(c) and 19 U.S.C. § 1675a(a)”); Nippon Steel Corp. v. United States, Slip Op. 02-153 at 7-8 (Ct. Int’l Trade Dec. 24, 2002) (same); Usinor Industeel, S.A. v. United States, Slip Op. 02-152 at 4 n.3 & 5-6 n.6 (Ct. Int’l Trade Dec. 20, 2002) (“more likely than not” standard is “consistent with the court’s opinion”; “the court has not interpreted ‘likely’ to imply any particular degree of ‘certainty’”); Indorama Chemicals (Thailand) Ltd. v. United States, Slip Op. 02-105 at 20 (Ct. Int’l Trade Sept. 4, 2002) (“standard is based on a likelihood of continuation or recurrence of injury, not a certainty”); Usinor v. United States, Slip Op. 02-70 at 43-44 (Ct. Int’l Trade July 19, 2002) (“‘likely’ is tantamount to ‘probable,’ not merely ‘possible’”).

<sup>25</sup> Commissioner Lane notes that, consistent with her views in *Pressure Sensitive Plastic Tape from Italy*, Inv. No. AA1921-167 (Second Review), USITC Pub. 3698 (June 2004), she does not concur with the U.S. Court of International Trade’s interpretation of “likely,” but she will apply the Court’s standard in this review and all subsequent reviews until either Congress clarifies the meaning or the U.S. Court of Appeals for the Federal Circuit addresses this issue.

<sup>26</sup> 19 U.S.C. § 1675a(a)(5).

<sup>27</sup> SAA at 887. Among the factors that the Commission should consider in this regard are “the fungibility or differentiation within the product in question, the level of substitutability between the imported and domestic products, the channels of distribution used, the methods of contracting (such as spot sales or long-term contracts), and lead times for delivery of goods, as well as other factors that may only manifest themselves in the longer term, such as planned investment and the shifting of production facilities.” *Id.*

<sup>28</sup> In analyzing what constitutes a reasonably foreseeable time, Chairman Koplan examines all the current and likely conditions of competition in the relevant industry. He defines “reasonably foreseeable time” as the length of time it is likely to take for the market to adjust to a revocation or termination. In making this assessment, he considers all factors that may accelerate or delay the market adjustment process including any lags in response by foreign producers, importers, consumers, domestic producers, or others due to: lead times; methods of contracting; the need to establish channels of distribution; product differentiation; and any other factors that may only manifest themselves in the longer term. In other words, this analysis seeks to define “reasonably foreseeable time” by reference to current and likely conditions of competition, but also seeks to avoid unwarranted speculation that may occur in predicting events into the more distant future.

<sup>29</sup> 19 U.S.C. § 1675a(a)(1).

terminated, and any findings by Commerce regarding duty absorption pursuant to 19 U.S.C. § 1675(a)(4).<sup>30</sup>

For the reasons stated below, we determine that revocation of the antidumping finding on PCR from Japan would be likely to lead to continuation or recurrence of material injury to the domestic PCR industry within a reasonably foreseeable time.

## B. Conditions of Competition

In evaluating the likely impact of the subject imports on the domestic industry if a finding is revoked, the statute directs the Commission to evaluate all relevant economic factors “within the context of the business cycle and conditions of competition that are distinctive to the affected industry.”<sup>31</sup> In performing our analysis under the statute, we have taken into account the following conditions of competition in the U.S. market for PCR.

PCR is produced in several grades for a wide variety of end uses.<sup>32</sup> Within each grade and application, the substitutability of U.S. and Japanese PCR is moderately high.<sup>33</sup> Most purchasers reported that the U.S. product and the subject imports are comparable.<sup>34</sup> Although most purchasers reported that quality was the most important factor in their purchasing decisions, price was the second-most important factor cited by purchasers.<sup>35</sup> For each end use purchasers typically require that PCR suppliers become certified or prequalified. This process may take anywhere from \*\*\*, depending on the end use.<sup>36</sup> Once qualified, the product from one supplier can be used interchangeably with the same product from another supplier.<sup>37</sup> While the certification or pre-qualification process appears to be very important to purchasers, the timetable required to become certified for many purchasers does not appear to be unduly burdensome. Furthermore, DDE’s part ownership of SDK until 2002 indicates that at least one major Japanese producer is very familiar with certification in the United States. SDK is known to have \*\*\*.<sup>38</sup>

Demand for PCR has been declining, both in the United States and on a worldwide basis since the original investigation and first five-year review. In the United States, consumption declined by \*\*\* percent in volume and \*\*\* percent in value from 1999 through 2004.<sup>39</sup> Worldwide consumption of PCR is reported to have fallen from 640 million pounds in 1999 to 630 million pounds in 2003.<sup>40</sup> The evidence in the record of this review as to future demand is mixed. While DDE anticipates \*\*\*, the International Institute of Synthetic Rubber Producers, Inc. (“IISRP”) forecasts that worldwide demand

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<sup>30</sup> 19 U.S.C. § 1675a(a)(1). The statute further provides that the presence or absence of any factor that the Commission is required to consider shall not necessarily give decisive guidance with respect to the Commission’s determination. 19 U.S.C. § 1675a(a)(5). While the Commission must consider all factors, no one factor is necessarily dispositive. SAA at 886.

<sup>31</sup> 19 U.S.C. § 1675a(a)(4).

<sup>32</sup> CR at I-14, PR at I-11.

<sup>33</sup> CR at II-25, PR at II-15.

<sup>34</sup> CR at II-15, PR at II-8.

<sup>35</sup> CR at II-14, PR at II-13.

<sup>36</sup> CR at II-21, PR at II-16.

<sup>37</sup> See CR at II-23 and D-10, PR at II-23 and D-10

<sup>38</sup> CR at IV-6, PR at IV-4.

<sup>39</sup> CR at I-21, PR at I-16.

<sup>40</sup> CR at II-10, PR at I-5.

will increase from 630 million pounds in 2003 to 675 million pounds in 2008.<sup>41</sup> The decline in demand for PCR has occurred largely because of a shift to functionally competitive products by PCR customers.<sup>42</sup>

PCR production facilities are dedicated to the manufacture of PCR and they require a significant level of continuing investment.<sup>43</sup> DDE was the only U.S. producer of PCR during the review period. It produced PCR at two plants, one in Louisville, KY and the other in Pontchartrain, LA. DDE intends to close its Louisville plant by December 2006 and consolidate production at its Pontchartrain facility. Following the Louisville plant closure, the company's annual production capacity is expected to decline from \*\*\* million pounds to \*\*\* million pounds.<sup>44</sup>

In January 2005, DDE pled guilty to charges of participating in an international conspiracy to fix prices of PCR in the period August 1999 through April 2002. DDE agreed to an \$84 million fine, to be paid in installments over five years. The company also agreed to civil settlements with certain of its customers; this settlement covers conduct in the period 1999 through 2003.<sup>45</sup> According to DDE, \*\*\*.<sup>46</sup>

The Japanese industry consists of three producers: Denki Kagaku Kogyo ("Denki"), Showa Denko K.K. ("SDK"), and TOSOH. As noted previously, one of these producers, SDK, participated in a joint venture with DDE until November 2002. The joint venture, Showa DDE Manufacturing K.K., manufactured PCR in Japan and marketed that product.<sup>47</sup> After the joint venture was dissolved, SDK \*\*\*.<sup>48</sup> The Japanese PCR industry expanded its production capacity, from 216 million pounds to 230 million pounds during the review period, even as worldwide demand for the product was declining and as producers in other countries were cutting back production and capacity.<sup>49</sup> The Japanese PCR industry relies heavily on export markets; for example, the most recent data available to us show that domestic demand in Japan was equivalent to only about 30 percent of the industry's capacity in the first three quarters of 2002.<sup>50</sup> Japan exported PCR to 45 countries in 2004.<sup>51</sup> There is also global excess capacity to produce PCR.<sup>52</sup>

While there have been minimal imports of PCR from Japan since the finding was made, nonsubject imports have become an increasingly significant factor in the U.S. market. Their market share, on the basis of quantity, rose from \*\*\* percent in 1999 to \*\*\* percent in 2004, while the U.S. market share held by U.S. producers decreased by \*\*\* percentage points to \*\*\* percent in 2004.<sup>53</sup>

Based on the record evidence, we find that these conditions of competition in the PCR market are not likely to change significantly in the reasonably foreseeable future. Accordingly, for purposes of this review, we find that current conditions in the PCR market provide us with a reasonable basis from which to assess the likely effects of revocation of the antidumping finding within a reasonably foreseeable time.

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<sup>41</sup> CR at II-10, PR at II-5.

<sup>42</sup> CR at II-11, PR at II-6.

<sup>43</sup> CR at I-17, PR at I-13.

<sup>44</sup> CR at II-5, PR at II-3; DDE Posthearing Brief, Exhibit 1, p. 27.

<sup>45</sup> CR at II-4, PR at II-2, DDE Prehearing Brief at 13-14.

<sup>46</sup> CR at III-7 n.15, PR at III-3 n.15.

<sup>47</sup> CR at I-20, PR at I-15.

<sup>48</sup> CR at IV-6, PR at IV-4.

<sup>49</sup> CR at IV-4, PR at IV-3.

<sup>50</sup> CR at IV-5, PR at IV-4.

<sup>51</sup> CR at IV-4, PR at IV-3.

<sup>52</sup> DDE Prehearing Brief at 10.

<sup>53</sup> CR/PR at Table C-1.

### C. Likely Volume of Subject Imports

In evaluating the likely volume of imports of subject merchandise if an order is revoked or a suspended investigation is terminated, the Commission is directed to consider whether the likely volume of imports would be significant either in absolute terms or relative to production or consumption in the United States.<sup>54</sup> In doing so, the Commission must consider “all relevant economic factors,” including four enumerated factors: (1) any likely increase in production capacity or existing unused production capacity in the exporting country; (2) existing inventories of the subject merchandise, or likely increases in inventories; (3) the existence of barriers to the importation of the subject merchandise into countries other than the United States; and (4) the potential for product shifting if production facilities in the foreign country, which can be used to produce the subject merchandise, are currently being used to produce other products.<sup>55</sup>

The statute provides that when an interested party withholds information that has been requested by the Commission, the Commission may “use the facts otherwise available in reaching” its determination.<sup>56</sup> As noted above, none of the respondent interested parties responded to the Commission’s notice of institution, and only one of them provided very limited information in response to the Commission’s questionnaire in this review. Accordingly, in analyzing volume and price, we have relied on the facts available in this review, which consist mainly of the records in the original investigation and first review, information provided by DDE and by purchasers, and information collected by Commission staff since the institution of the review, including public data published by the IISRP.

Imports of PCR from Japan tripled between 1968 and 1972, before the antidumping finding was imposed,<sup>57</sup> and then all but ceased after the finding was in place.<sup>58</sup> This significant reduction in subject imports after Treasury’s finding appears to reflect the restraining effects of the finding. We note in particular that subject imports from Denki, the largest Japanese producer, \*\*\*, despite Denki’s zero percent margin, likely due to the finding’s restraining effect.<sup>59</sup>

In its first five-year review, the Commission found that subject import volumes would likely be significant if the finding were revoked. For this finding the Commission relied on: the Japanese industry’s rising production capacity in the face of declining global demand; the Japanese industry’s export dependence; its proven ability to quickly shift large quantities of exports to new markets; and the Japanese industry’s behavior at the time of the original investigation.<sup>60</sup>

We again find that subject import volumes are likely to be significant if the finding is revoked. Many of the same factors continue to support this conclusion. First, Japanese PCR producers increased their production capacity at a time when worldwide demand for the product has been declining and other

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<sup>54</sup> 19 U.S.C. § 1675a(a)(2).

<sup>55</sup> 19 U.S.C. § 1675a(a)(2)(A-D).

<sup>56</sup> 19 U.S.C. § 1677e(a).

<sup>57</sup> USITC Pub. 622 at 3.

<sup>58</sup> CR/PR at Table I-1.

<sup>59</sup> When Treasury initially investigated Denki, it found margins ranging from \*\*\* percent. However, in every administrative review of Denki, there were \*\*\* from Denki and therefore a zero margin was assigned by Commerce. DDE Posthearing Brief, Exhibit 1 at 12-14.

<sup>60</sup> USITC Pub. 3212 at 11-13 n. 83 & n. 97. The record in the first review contained only limited data provided by foreign producers, and, accordingly, the Commission relied primarily on the facts available in that review and also took an adverse inference on volume and price against a Japanese producer that failed to cooperate to the best of its ability.

countries were reducing their production and capacity.<sup>61</sup> Estimated Japanese production capacity grew from 216 million pounds to 230 million pounds from 2002 to 2003.<sup>62</sup> Japanese capacity is thus \*\*\* total apparent U.S. consumption in 2004 of \*\*\* million pounds and \*\*\*. We further note that Japanese PCR producers depend heavily on exports. For example, domestic demand in Japan was equivalent to only 30 percent of the Japanese industry's total capacity in the first three quarters of 2002 (the most recent period for which we have data available).<sup>63</sup> In 2004, Japan shipped PCR to 45 countries. Some of the Japanese producers may have an additional incentive to increase production, in order to consume captive stockpiles of raw materials.<sup>64</sup>

Additionally, the import volumes are likely to be significant due to the higher average prices for PCR in the United States, as compared with other markets,<sup>65</sup> which provide an incentive for the Japanese producers to shift exports to the United States should the finding be revoked. Data submitted both by DDE and by purchaser Gates indicate that for many PCR product types, prices for the same product are higher in the United States than in other markets and that the U.S. market, in contrast to China and other markets, provides important opportunities for sales of higher valued products.<sup>66</sup> The lower unit values of DDE's export sales would seem to confirm this.

Asia, and in particular China, has become an increasingly important market for Japanese PCR producers and there is some indication on the record that demand for PCR in Asia, unlike demand elsewhere in the world, is growing.<sup>67</sup> However, China recently imposed antidumping duties against PCR producers in Europe, Japan, and the United States.<sup>68</sup> One Japanese producer, SDK, faces a very high dumping margin in China, and thus may have an added incentive to export to the United States if the finding is revoked. As previously stated, SDK is known to have \*\*\*.<sup>69</sup> Furthermore, its experience in its joint venture with DDE may have given it valuable insights into the U.S. PCR market.<sup>70</sup> SDK is thought to account for 20 percent of total Japanese capacity, or about 46 million pounds. While the other Japanese producers face lower margins than SDK in China, the higher prices in the United States and the higher valued products sold here would nevertheless give them an incentive to ship products to the United States.

Non-subject imports represented about \*\*\* of the U.S. market during much of the review period. The presence of these non-subject imports suggests that purchasers may seek to diversify their supply sources and does not weigh against our finding of an increase in subject imports if the finding were to be revoked.

The Japanese producers' high capacity levels and their dependence on export markets, coupled with the relatively high prices for PCR in the United States, indicate that they would likely resume

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<sup>61</sup> CR at IV-3, PR at IV-2.

<sup>62</sup> CR/PR at Table IV-4.

<sup>63</sup> CR at IV-5, PR at IV-4.

<sup>64</sup> DDE Prehearing Brief at 12 and 18.

<sup>65</sup> CR at II-3, PR at II-2.

<sup>66</sup> Gates Posthearing Brief at Attachment 1, p. 14; and DDE Posthearing Brief at 34-35, and Final Comments at 3.

<sup>67</sup> Gates Posthearing Brief at 5 and Exhibit A.

<sup>68</sup> The Chinese antidumping margins were: 32 percent for Lanxess (a PCR producer in Germany), 53 percent for Polimeri (which produces PCR in France), 2 percent for Denki, 3 percent for Tosoh, 151 percent for SDK, and 151 percent for DDE.

<sup>69</sup> CR at IV-6, PR at IV-4.

<sup>70</sup> DDE Prehearing Brief at 20.



significant exports to the United States if the finding were revoked.<sup>71</sup> This fact, in light of their behavior at the time of the original investigation, when subject imports tripled from 1968 to 1972,<sup>72</sup> suggests that they would behave similarly if the finding were revoked. Accordingly, we find that the current low market share of subject imports is a result of the restraining effects of the finding rather than the Japanese producers' unwillingness or inability to ship significant volumes to the United States. We further find that subject import volumes would increase to significant levels in the event of revocation.

#### D. Likely Price Effects of Subject Imports

In evaluating the likely price effects of subject imports if an order is revoked or a suspended investigation is terminated, the Commission is directed to consider whether there is likely to be significant underselling by the subject imports as compared to domestic like products and whether the subject imports are likely to enter the United States at prices that otherwise would have a significant depressing or suppressing effect on the price of domestic like products.<sup>73</sup>

In the original investigation, the Commission found that the subject imports consistently undersold the domestic product and had a growing adverse impact on prices in the domestic market.<sup>74</sup> We further note that price is a significant factor (albeit not the most important factor) in purchasing decisions of U.S. purchasers,<sup>75</sup> and that the Japanese product is readily substitutable for the domestic like product within most applications.<sup>76</sup>

In its first five-year review, the Commission found that revocation of the finding would be likely to lead to significant price effects, including underselling, and price depression or suppression. The Commission relied for this finding on evidence from the original investigation, and on evidence provided by the domestic industry that Japanese producers likely would aggressively price their product in the U.S. market if the finding were revoked.<sup>77</sup>

There is little evidence regarding Japanese prices in the U.S. market due to the virtual cessation of imports from Japan since the 1973 finding was imposed.<sup>78</sup> No specific price comparisons were possible in this review.<sup>79</sup> However, DDE provided evidence indicating that Japanese producers likely would aggressively price their product in the U.S. market if the finding were revoked.<sup>80</sup> There is moderately

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<sup>71</sup> DDE's loss of market share to Japanese producers in the PCR adhesives market in Brazil may be illustrative of the likely effects of Japanese competition. DDE's share of this market fell from 50 percent in the 1999-2000 period to 21 percent in the first quarter of 2004, as Japanese imports were reportedly sold at significantly lower prices than DDE's product. DDE Prehearing Brief at 25.

<sup>72</sup> USITC Pub. 622 at 3.

<sup>73</sup> 19 U.S.C. § 1675a(a)(3). The SAA states that "[c]onsistent with its practice in investigations, in considering the likely price effects of imports in the event of revocation and termination, the Commission may rely on circumstantial, as well as direct, evidence of the adverse effects of unfairly traded imports on domestic prices." SAA at 886.

<sup>74</sup> USITC Pub. 622 at 4.

<sup>75</sup> CR/PR at Table II-1

<sup>76</sup> CR at II-14, PR at II-7, and CR/PR at Table II-3.

<sup>77</sup> USITC Pub. 3212 at 13-15.

<sup>78</sup> CR/PR at Table I-1.

<sup>79</sup> The record contains data on average unit values ("AUVs") of the limited quantities of subject imports during the review period. CR/PR at Table C-1. We recognize that these AUVs were \*\*\*, but we discount this information because of the small quantities of imports involved.

<sup>80</sup> DDE Prehearing Brief at 23-27.

high substitutability between the Japanese subject merchandise and the domestic product.<sup>81</sup> DDE has provided information showing that Japanese producers captured substantial market share in one segment of the Brazilian PCR market through the use of low-priced imports.<sup>82</sup> Data submitted by purchaser Gates also indicates that Japanese producers price \*\*\* DDE in third country markets, presumably for equivalent product types.<sup>83</sup> This evidence of \*\*\* pricing by Japanese producers in third-country markets confirms their likely behavior in the U.S. market if the finding were revoked, conduct consistent with the finding in the original investigation.

Based on the evidence in the record as to the pricing of Japanese imports in the original investigation, and more recently, pricing in third-country markets, we find it likely that the Japanese producers would offer low prices to U.S. purchasers to regain market share if the finding were revoked. As demand continues to decline and the domestic industry faces greater competition from nonsubject imports, the increased and significant volumes of subject imports that would be added to the supply of PCR in the U.S. market were the finding to be revoked would likely have significant depressing or suppressing effects on prices for the domestic like product. Accordingly, we find that revocation of the antidumping finding would be likely to lead to significant price effects, including significant underselling of the domestic like product by the subject imports, as well as significant price depression or suppression, in the reasonably foreseeable future.

#### E. Likely Impact of Subject Imports

In evaluating the likely impact of imports of subject merchandise if an order is revoked or a suspended investigation is terminated, the Commission is directed to consider all relevant economic factors that are likely to have a bearing on the state of the industry in the United States, including but not limited to: (1) likely declines in output, sales, market share, profits, productivity, return on investments, and utilization of capacity; (2) likely negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital, and investment; and (3) likely negative effects on the existing development and production efforts of the industry, including efforts to develop a derivative or more advanced version of the domestic like product.<sup>84</sup> All relevant economic factors are to be considered within the context of the business cycle and the conditions of competition that are distinctive to the industry.<sup>85</sup> As instructed by the statute, we have considered the extent to which any improvement in the

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<sup>81</sup> CR at II-14, PR at II-14.

<sup>82</sup> DDE Prehearing Brief at 23-26. We acknowledge that this pricing data in the Brazilian market may be driven to some extent by differences in product mix between imports from Japan and imports from other sources, including the United States. Nonetheless, the Brazilian pricing data provide some additional support for our conclusion as to the likely behavior of Japanese exporters.

<sup>83</sup> Gates Posthearing Brief at Attachment 1, p. 14.

<sup>84</sup> 19 U.S.C. § 1675a(a)(4).

<sup>85</sup> 19 U.S.C. § 1675a(a)(4). Section 752(a)(6) of the Act states that “the Commission may consider the magnitude of the margin of dumping or the magnitude of the net countervailable subsidy” in making its determination in a five-year review. 19 U.S.C. § 1675a(a)(6). The statute defines the “magnitude of the margin of dumping” to be used by the Commission in five-year reviews as “the dumping margin or margins determined by the administering authority under section 1675a(c)(3) of this title.” 19 U.S.C. § 1677(35)(C)(iv). See also SAA at 887. In the final results of its expedited sunset review of the antidumping finding on PCR from Japan, Commerce determined that revocation of the order would likely lead to a continuation or recurrence of dumping at weighted-average margins of: 0 percent for Denki Kagaku Kogyo, KK; 55 percent for Denki Kagaku Kogyo, KK/Hoei Sangyo Co., Ltd., Suzugo Corporation; and all others. 69 Fed. Reg. 64276 (Nov. 4, 2004).

state of the domestic industry is related to the orders at issue and whether the industry is vulnerable to material injury if the orders are revoked.<sup>86</sup>

In the original determination, the Commission found that Japanese imports at less than fair value, which tripled between 1968 and 1972, adversely impacted the domestic industry.<sup>87</sup> The Commission found that sales of subject imports at less than fair value contributed to the domestic industry's lost sales, lower profits, and loss of market share despite an increase in domestic demand.<sup>88</sup> The Commission also determined that the increased sales of subject merchandise, which consistently sold below the domestic product, had a growing, adverse impact on prices in the domestic market.<sup>89</sup>

In its first five-year review, the Commission found that the domestic industry had improved materially since the imposition of the finding, and that the industry was performing well. It found that the domestic industry was not then in a weakened state, as contemplated by the vulnerability criterion of the statute, given its strong operating performance and improved profitability. Nonetheless, the Commission took into account that global demand continued to decline, that global capacity exceeded demand, and that new synthetic rubber elastomers were likely to continue to take market share from PCR. Against this background, the Commission found that a significant volume of low-priced subject imports would likely have a significant adverse impact on the production, shipments, sales, and revenue levels of the domestic industry.<sup>90</sup>

The condition of the domestic industry has deteriorated significantly since the first five-year review. This deterioration is reflected in virtually all economic data. Production \*\*\* million pounds in 2004,<sup>91</sup> and the industry's total shipments \*\*\* million pounds over the same period.<sup>92</sup> Capacity utilization \*\*\* percent in 2004.<sup>93</sup> The industry's market share \*\*\* percent, on a volume basis, from 1999 to 2004.<sup>94</sup> The number of production and related workers, hours worked, and productivity \*\*\* over the review period.<sup>95</sup> The industry's financial results \*\*\*, as it faced rising energy and raw material costs.<sup>96</sup> During the latter part of the review period, it was not able to raise prices sufficiently to cover these sharply rising costs. Its gross profits \*\*\* million in 2004; and its operating income margin went from \*\*\* percent in 1999 to a \*\*\* percent in 2004.<sup>97</sup> Based on the industry's performance during the review period, we find that the domestic industry is vulnerable to material injury if the finding is revoked.

We conclude that if the finding is revoked, the likely volume of subject imports would be significant and that these imports likely would have significant price depressing effects and hamper the

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<sup>86</sup> The SAA states that in assessing whether the domestic industry is vulnerable to injury if the order is revoked, the Commission "considers, in addition to imports, other factors that may be contributing to overall injury. While these factors, in some cases, may account for the injury to the domestic industry, they may also demonstrate that an industry is facing difficulties from a variety of sources and is vulnerable to dumped or subsidized imports." SAA at 885.

<sup>87</sup> USITC Pub. 622 at 3.

<sup>88</sup> USITC Pub. 622 at 4.

<sup>89</sup> USITC Pub. 622 at 4.

<sup>90</sup> USITC Pub. 3212 at 15-17.

<sup>91</sup> CR/PR at Table III-1.

<sup>92</sup> CR/PR at Table III-2.

<sup>93</sup> CR/PR at Table III-1.

<sup>94</sup> CR/PR at Table C-1.

<sup>95</sup> CR/PR at Table III-5.

<sup>96</sup> CR at III-6, PR at III-3.

<sup>97</sup> CR/PR at Table III-6. We note that even if the expenses related to the antitrust litigation are not included, as respondent Gates advocates, DDE would still \*\*\* in 2003 and 2004.

industry's efforts to return to profitability. Given the substitutable nature of the product, we find that a significant volume of low-priced subject imports would likely have a significant adverse impact on the production, shipments, sales, and revenue levels of the domestic industry. This reduction in the industry's production, sales, and revenue levels would have a direct adverse impact on the industry's profitability and employment levels as well as its ability to raise capital and make and maintain necessary capital investments. Accordingly, we conclude that, if the antidumping finding is revoked, the subject imports would be likely to have a significant adverse impact on the domestic industry within a reasonably foreseeable time.

## **CONCLUSION**

For the foregoing reasons, we determine that revocation of the antidumping finding on polychloroprene rubber from Japan would be likely to lead to continuation or recurrence of material injury to the U.S. polychloroprene rubber industry within a reasonably foreseeable time.

# **DISSENTING VIEWS OF VICE CHAIRMAN DEANNA TANNER OKUN AND COMMISSIONER JENNIFER A. HILLMAN**

## **I. INTRODUCTION**

Section 751(d)(2) of the Tariff Act of 1930, as amended (“the Act”), requires that the U.S. Department of Commerce (“Commerce”) revoke a countervailing duty order or an antidumping duty order or finding in a five-year review unless Commerce determines that dumping or a countervailable subsidy would be likely to continue or recur and the U.S. International Trade Commission (“Commission”) determines that material injury to a U.S. industry would be likely to continue or recur within a reasonably foreseeable time.<sup>98</sup> Based on the record in this second five-year review, we determine that material injury is not likely to continue or recur within a reasonably foreseeable time if the antidumping finding on subject imports of polychloroprene rubber from Japan is revoked.

We join our colleagues’ discussion regarding the background to this review, and the domestic like product, domestic industry, and related parties. We write separately to discuss the legal standard governing five-year reviews, conditions of competition, and to provide our analysis of the statutory factors.

## **II. LIKELIHOOD OF CONTINUATION OR RECURRENCE OF MATERIAL INJURY IF THE FINDING IS REVOKED**

### **A. Legal Standard**

In a five-year review conducted under section 751(c) of the Act, Commerce will revoke a countervailing or antidumping duty order or terminate a suspended investigation unless: (1) it makes a determination that dumping or a countervailable subsidy is likely to continue or recur, and (2) the Commission makes a determination that revocation of an order or termination of a suspended investigation would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time.<sup>99</sup> The Statement of Administrative Action (SAA) states that “under the likelihood standard, the Commission will engage in a counter-factual analysis; it must decide the likely impact in the reasonably foreseeable future of an important change in the status quo – the revocation or termination of a proceeding and the elimination of its restraining effects on volumes and prices of imports.”<sup>100</sup> Thus, the likelihood standard is prospective in nature.<sup>101</sup> The statute states that “the Commission shall consider that the effects of revocation or termination may not be imminent, but may manifest themselves only over a

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<sup>98</sup> 19 U.S.C. § 1675(c).

<sup>99</sup> 19 U.S.C. § 1675a(a).

<sup>100</sup> SAA, H.R. Rep. No. 103-316, vol. I, at 883-84 (1994). The SAA states that “[t]he likelihood of injury standard applies regardless of the nature of the Commission’s original determination (material injury, threat of material injury, or material retardation of an industry). Likewise, the standard applies to suspended investigations that were never completed.” SAA at 883.

<sup>101</sup> While the SAA states that “a separate determination regarding current material injury is not necessary,” it indicates that “the Commission may consider relevant factors such as current and likely continued depressed shipment levels and current and likely continued [sic] prices for the domestic like product in the U.S. market in making its determination of the likelihood of continuation or recurrence of material injury if the order is revoked.” SAA at 884.

longer period of time.”<sup>102</sup> According to the SAA, a “‘reasonably foreseeable time’ will vary from case-to-case, but normally will exceed the ‘imminent’ time frame applicable in a threat of injury analysis in antidumping and countervailing duty investigations.”<sup>103</sup>

Although the standard in five-year reviews is not the same as the standard applied in original antidumping or countervailing duty investigations, it contains some of the same fundamental elements. The statute provides that the Commission is to “consider the likely volume, price effect, and impact of imports of the subject merchandise on the industry if the order is revoked or the suspended investigation is terminated.”<sup>104</sup> It directs the Commission to take into account its prior injury determinations, whether any improvement in the state of the industry is related to the order or the suspension agreement under review, whether the industry is vulnerable to material injury if the order is revoked or the suspension agreement is terminated, and any findings by Commerce regarding duty absorption pursuant to 19 U.S.C. § 1675(a)(4).<sup>105</sup>

The legal standard the Commission is to apply is whether revocation of an order “would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time.”<sup>106</sup> The U.S. Court of International Trade has found that “likely,” as used in the sunset review provisions of the Act, means “probable,” and the Commission applies that standard in five-year reviews.<sup>107 108 109</sup>

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<sup>102</sup> 19 U.S.C. § 1675a(a)(5).

<sup>103</sup> SAA at 887. Among the factors that the Commission should consider in this regard are “the fungibility or differentiation within the product in question, the level of substitutability between the imported and domestic products, the channels of distribution used, the methods of contracting (such as spot sales or long-term contracts), and lead times for delivery of goods, as well as other factors that may only manifest themselves in the longer term, such as planned investment and the shifting of production facilities.” *Id.*

<sup>104</sup> 19 U.S.C. § 1675a(a)(1).

<sup>105</sup> 19 U.S.C. § 1675a(a)(1). The statute further provides that the presence or absence of any factor that the Commission is required to consider shall not necessarily give decisive guidance with respect to the Commission’s determination. 19 U.S.C. § 1675a(a)(5). While the Commission must consider all factors, no one factor is necessarily dispositive. SAA at 886.

We note that no duty absorption findings have been made by Commerce. Confidential Staff Report (AA-1921-129, May 27, 2005) at I-11 (hereinafter CR).

<sup>106</sup> 19 U.S.C. § 1675a(a).

<sup>107</sup> See *Siderca, S.A.I.C. v. United States*, \_\_\_ F. Supp. 2d \_\_\_, Slip Op. 04-133 at 6 (Oct. 27, 2004) (Common meaning of “likely” is “probable” or “more likely than not”); *NMB Singapore Ltd. v. United States*, 288 F. Supp. 2d 1306, 1352 (2003) (“‘likely’ means probable within the context of 19 U.S.C. §§ 1675(c) and 1675a(a)”; *Nippon Steel Corp., et al. v. United States*, Slip Op. 02-153 at 7-8 (Dec. 24, 2002) (same) (*Nippon*); *Usinor Industeel, S.A. v. United States*, Slip Op. 02-152 at 6 n.6 (Dec. 20, 2002) (*Usinor Industeel III*); and *Usinor v. United States*, Slip Op. 02-70 at 43-44 (July 19, 2002) (“‘likely’ is tantamount to ‘probable,’ not merely ‘possible’”) (*Usinor*).

<sup>108</sup> The Court has interpreted the word likely to mean probable or “more likely than not.” The Court’s “likely” standard means that the continuation or recurrence of material injury must be “more likely than not,” otherwise the order must be revoked. Accordingly, Vice Chairman Okun applies this standard. See Additional Views of Vice Chairman Deanna Tanner Okun Concerning the “Likely” Standard in *Certain Seamless Carbon and Alloy Steel Standard, Line and Pressure Pipe from Argentina, Brazil, Germany, and Italy*, Invs. Nos. 701-TA-362 (Review) and 731-TA-707-710 (Remand).

<sup>109</sup> Commissioner Hillman interprets the statute as setting out a standard of whether it is “more likely than not” that material injury would continue or recur upon revocation. She assumes that this is the type of meaning of “probable” that the Court intended when the Court concluded that “likely” means “probable.” See Separate Views of Vice Chairman Jennifer A. Hillman Regarding the Interpretation of the Term “Likely”, in *Certain Carbon Steel Products from Australia, Belgium, Brazil, Canada, Finland, France, Germany, Japan, Korea, Mexico, the Netherlands, Poland, Romania, Spain, Sweden, Taiwan, and the United Kingdom* (Views on Remand), Invs. Nos.

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In evaluating the likely volume of imports of subject merchandise if an order is revoked or a suspended investigation is terminated, the Commission is directed to consider whether the likely volume of imports would be significant either in absolute terms or relative to production or consumption in the United States.<sup>110</sup> In doing so, the Commission must consider “all relevant economic factors,” including four enumerated factors: (1) any likely increase in production capacity or existing unused production capacity in the exporting country; (2) existing inventories of the subject merchandise, or likely increases in inventories; (3) the existence of barriers to the importation of the subject merchandise into countries other than the United States; and (4) the potential for product shifting if production facilities in the foreign country, which can be used to produce the subject merchandise, are currently being used to produce other products.<sup>111</sup>

In evaluating the likely price effects of subject imports if an order is revoked or a suspended investigation is terminated, the Commission is directed to consider whether there is likely to be significant underselling by the subject imports as compared to domestic like products and whether the subject imports are likely to enter the United States at prices that otherwise would have a significant depressing or suppressing effect on the price of domestic like products.<sup>112</sup>

In evaluating the likely impact of imports of subject merchandise if an order is revoked or a suspended investigation is terminated, the Commission is directed to consider all relevant economic factors that are likely to have a bearing on the state of the industry in the United States, including but not limited to: (1) likely declines in output, sales, market share, profits, productivity, return on investments, and utilization of capacity; (2) likely negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital, and investment; and (3) likely negative effects on the existing development and production efforts of the industry, including efforts to develop a derivative or more advanced version of the domestic like product.<sup>113</sup> All relevant economic factors are to be considered within the context of the business cycle and the conditions of competition that are distinctive to the industry.<sup>114</sup> As instructed by the statute, we have considered the extent to which any improvement in the state of the domestic industry is related to the finding at issue and whether the industry is vulnerable to material injury if the finding is revoked.<sup>115 116</sup>

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<sup>109</sup> (...continued)

AA1921-197 (Review), 701-TA-231, 319-320, 322, 325-328, 340, 342, and 348-350 (Review), and 731-TA-573-576, 578, 582-587, 604, 607-608, 612, and 614-618 (Review) (Remand), USITC Pub. 3526 (July 2002) at 30-31.

<sup>110</sup> 19 U.S.C. § 1675a(a)(2).

<sup>111</sup> 19 U.S.C. § 1675a(a)(2)(A-D).

<sup>112</sup> 19 U.S.C. § 1675a(a)(3). The SAA states that “[c]onsistent with its practice in investigations, in considering the likely price effects of imports in the event of revocation and termination, the Commission may rely on circumstantial, as well as direct, evidence of the adverse effects of unfairly traded imports on domestic prices.” SAA at 886.

<sup>113</sup> 19 U.S.C. § 1675a(a)(4).

<sup>114</sup> 19 U.S.C. § 1675a(a)(4). Section 752(a)(6) of the Act states that “the Commission may consider the magnitude of the margin of dumping or the magnitude of the net countervailable subsidy” in making its determination in a five-year review. 19 U.S.C. § 1675a(a)(6). The statute defines the “magnitude of the margin of dumping” to be used by the Commission in five-year reviews as “the dumping margin or margins determined by the administering authority under section 1675a(c)(3) of this title.” 19 U.S.C. § 1677(35)(C)(iv). See also SAA at 887.

On November 2, 2004, Commerce found the following antidumping margins with respect to PCR from Japan: Denki KK: 0.00; Denki KK/Hoei Sangyo Co., Ltd.: 55.00; Suzugo Corp.: 55.00; and All others: 55.00. CR at I-11, I-1.

<sup>115</sup> The SAA states that in assessing whether the domestic industry is vulnerable to injury if the order is revoked, the Commission “considers, in addition to imports, other factors that may be contributing to overall injury. While  
(continued...)

## B. Conditions of Competition

In evaluating the impact of subject imports on the domestic industry if the finding is revoked, the statute directs the Commission to evaluate all the relevant economic factors “within the context of the business cycle and conditions of competition that are distinctive to the affected industry.”<sup>117</sup> Discussed below are the conditions of competition that weigh significantly in our determination.

In the 32 years since the finding was put in place, and even since the last five-year review, the conditions in the U.S. polychloroprene rubber (“PCR”) market have undergone significant changes. Most importantly, U.S. demand for PCR has declined. Apparent domestic consumption of PCR was \*\*\* pounds in 1972. By 1998, the end of the POI for the first five-year review, domestic consumption had declined by nearly half to \*\*\* pounds. Domestic consumption continued to decline during \*\*\* of the period of this second five-year review, from \*\*\* pounds in 1999 to \*\*\* pounds in 2004.<sup>118</sup> U.S. consumption is expected to decline further over the next 10 years.<sup>119</sup> Worldwide PCR consumption is expected to increase slightly from 630 million pounds in 2003 to 675 million pounds in 2008, primarily due to increased demand in Asia, particularly in China.<sup>120</sup>

Declining U.S. PCR demand is largely attributable to product substitution, which has been occurring since 1973.<sup>121</sup> Ethylene-propylene diene elastomers (EPDM), which were introduced commercially in the early 1960s, have displaced PCR for use in \*\*\*. \*\*\* in the next 10 to 12 years.<sup>122</sup> DDE predicts that continued substitution will lead to a \*\*\* decrease in PCR used for \*\*\* and another \*\*\* decline in PCR used for \*\*\* applications.<sup>123</sup>

Throughout the years since the original finding, producers have downsized or exited the market. Bayer’s departure from the market in 1998 left DuPont Dow Elastomers L.L.C. (DDE), a joint venture between Dow and Dupont, as the only U.S. PCR producer. DDE, which currently produces PCR at two plants - Louisville, KY and LaPlace, LA (the Pontchartrain facility), was the sole U.S. producer of PCR during the period of review.<sup>124</sup> DDE plans to close its facility in Louisville in \*\*\*, and intends to

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<sup>115</sup> (...continued)

these factors, in some cases, may account for the injury to the domestic industry, they may also demonstrate that an industry is facing difficulties from a variety of sources and is vulnerable to dumped or subsidized imports.” SAA at 885.

<sup>116</sup> 19 U.S.C. § 1675a(6).

<sup>117</sup> 19 U.S.C. § 1675a(a)(4)

<sup>118</sup> CR, PR at Table I-2.

<sup>119</sup> CR at II-10, PR at II-6.

<sup>120</sup> Id., and hearing transcript at 54.

<sup>121</sup> CR at II-11, PR at II-6.

<sup>122</sup> Id.

<sup>123</sup> CR at II-11, PR at II-6.

<sup>124</sup> On January 3, 2005, DuPont and Dow announced that DuPont intends to exercise its option to acquire certain DDE assets. DuPont will purchase Dow’s remaining equity interest in the joint venture. Subject to regulatory approval, DuPont and Dow expect to close the transaction on June 30, 2005, at which time the entire venture will become a wholly owned subsidiary of DuPont. CR at I-19, PR at I-15.



consolidate operations in the Pontchartrain plant. The Louisville facility \*\*\*<sup>125</sup> \*\*\*.<sup>126</sup> The closure of the Louisville facility will cut U.S. capacity by \*\*\*, from \*\*\*<sup>127</sup> pounds to about \*\*\*.<sup>128</sup>

As reported in the related parties discussion, DDE had a joint venture with Showa Denko K.K. (“SDK”) in Japan, called Showa DDE Manufacturing K.K. (“SDEM”), but the joint-venture was dissolved on November 1, 2002. SDK became the sole owner of SDEM and eventually merged the manufacturing facilities into SDK.<sup>129</sup> SDK requested that Commerce assign it the same zero antidumping margin it had enjoyed under the DDE joint venture. Commerce considered SDK to be a new entity and denied the request, assigning it the “all others” rate of 55 percent. On January 1, 2004 SDK established a subsidiary in the United States to \*\*\*.<sup>130</sup>

PCR is not a commodity product. Rather, it has a balanced combination of properties that lead to its use in a number of applications, including adhesives; latex products, such as medical gloves; wire and cable; and a number of automotive products, such as belts and hoses.<sup>131</sup> PCR is extremely durable - it resists degradation from sun, ozone, and weather; performs well in contact with oils and other chemicals, resists combustion, and resists damage caused by flexing and twisting.<sup>132</sup> Nonetheless, end-users are very concerned with product quality, often requiring vendor certification or prequalification before making purchasing decisions.<sup>133</sup> Most purchasers require vendors to meet international standards, and many maintain rigorous testing and trials that may be specific to a particular application and/or PCR grade.<sup>134</sup> Qualification times varied from weeks, in the case of one purchaser, to up to 18 months for another. Most purchasers reported a qualification time of at least several months.<sup>135</sup>

On January 19, 2005, the U.S. Department of Justice announced that DDE agreed to plead guilty and pay an \$84 million fine, subject to court approval, for participating in an international conspiracy to fix the prices of polychloroprene. DDE was charged with conspiring with its competitors to fix the price of PCR in the United States and elsewhere from August 1999 to April 2002.<sup>136</sup> In addition, DDE agreed to settle antitrust claims by customers for overcharging for polychloroprene. DDE has agreed to pay \$36 million (plus \$6.1 million in attorneys’ fees and notice costs) to settle claims by customers who purchased polychloroprene directly from DDE or its competitors, and alleged they were overcharged for

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<sup>125</sup> Hearing transcript at 106.

<sup>126</sup> CR at II-2, PR at II-1.

<sup>127</sup> CR, PR at Table C-1,

<sup>128</sup> CR at II-2 and Table C-1; PR at II-II-1 and Table C-1; DDE’s Posthearing Brief at 24.

<sup>129</sup> CR at II-1, PR at II-1.

<sup>130</sup> CR at II-1, PR at I-1.

<sup>131</sup> General purpose solid types of PCR are used in a variety of elastomeric applications, particularly in molded and extruded goods. The solid adhesive types are adaptable to the manufacture of quick-setting and high-bond strength solvent-based adhesives. The latex types are used in solventless adhesives, dipped goods, film and other specialty applications. CR at I-14-15, PR at I-12.

<sup>132</sup> CR at I-14, PR at I-11-12.

<sup>133</sup> Eleven of the 12 responding PCR purchasers require vendor certification or prequalification of their polychloroprene, and most purchasers consider quality to be a very important factor in making purchasing decisions. CR at II-21, PR at II-12.

<sup>134</sup> Hearing transcript at 145 to 146.

<sup>135</sup> CR at II-21, PR at II-13.

<sup>136</sup> CR at II-4, PR at II-2.

polychloroprene. Some purchasers, including Gates,<sup>137</sup> opted out of this settlement. DDE also has reached agreements to settle claims by indirect purchasers of polychloroprene.<sup>138</sup> In April 2004, DDE announced that DuPont had agreed to pay 100 percent of any liability of the joint venture up to \$150 million and 75 percent of any amount exceeding \$150 million.<sup>139</sup> Investigations are ongoing or recently completed with respect to other producers of PCR.

Based on the events described above, we find that the conditions of competition in the U.S. PCR market have changed since the finding became effective. U.S. consumption has declined significantly, largely as a result of the availability of substitute products. Domestic suppliers exited the market as demand contracted, leaving just one U.S. producer - DDE. In 2006, DDE intends to close its Louisville facility, consolidating all U.S. PCR production at its Pontchartrain facility and reducing U.S. capacity by over half. These events have occurred despite the absence of subject imports from the U.S. market during the last 32 years.

**C. Revocation of the Finding on Subject Imports from Japan is not Likely to Lead to a Continuation or Recurrence of Material Injury within a Reasonably Foreseeable Time**

**1. Likely Volume of Subject Imports**

The Commission is to consider whether the likely volume of subject imports would be significant either in absolute terms or relative to production or consumption in the United States if the finding under review were revoked. In so doing, the Commission shall consider “all relevant economic factors,” including four enumerated in the statute: (1) any likely increase in production capacity or existing unused production capacity in the exporting country; (2) existing inventories of the subject merchandise, or likely increases in inventories; (3) the existence of barriers to the importation of the subject merchandise in countries other than the United States; and (4) the potential for product shifting if the production facilities in the foreign country, which can be used to produce the subject merchandise, are currently being used to produce other products.<sup>140</sup>

The focus in a sunset review is whether subject import volume is likely to be significant within a reasonably foreseeable time if the antidumping order is revoked.

We find that, although the Japanese producers have the capacity and ability to ship significant volumes of subject product into the U.S. market, the likely increase in the volume of subject imports will be mitigated by prevailing conditions in the global market, particularly with respect to demand from China, suggesting that the volume of subject imports will not result in a significant impact on the U.S. PCR industry in the reasonably foreseeable future.

In performing our analysis of the likely volume effect, we have considered the Commission’s previous volume findings. In the original investigation, imports of PCR from Japan trebled between 1968 and 1972.<sup>141</sup> Japanese imports held \*\*\* percent of the market in 1972; non-subject imports held \*\*\* percent of the market, and domestic producers held \*\*\* percent of the market.<sup>142</sup> During the previous five year review, the Commission found that the low market share of subject imports was a result of the

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<sup>137</sup> Gates Corp., a purchaser of significant PCR quantities, participated in the Commission’s investigation, submitting a response to the purchaser survey and participating in the public hearing.

<sup>138</sup> DDE’s Posthearing Brief, Response to Commission Questions at 4.

<sup>139</sup> CR at II-4, PR at II-2.

<sup>140</sup> 19 U.S.C. § 1675a(a)(2)(A-D).

<sup>141</sup> USITC Pub. 622 at 3.

<sup>142</sup> CR, PR at Table I-1.

restraining effects of the order rather than the Japanese producers' unwillingness or inability to ship significant volumes to the United States, and that subject import volumes would increase to significant levels in the event of revocation.<sup>143</sup> In 1998, Japanese imports held \*\*\* percent of domestic PCR market, non-subject imports held \*\*\* percent of the market, and domestic producers held \*\*\* percent of the market.<sup>144</sup> During the current period of review, domestic producers' market share declined overall, and was \*\*\* percent in 2004. Japanese products continued to have a very minimal presence, fluctuating throughout the period of review. Japanese imports comprised \*\*\* percent of the domestic PCR market in 2004. Nonsubject market share fluctuated but increased overall during this review period, and \*\*\* since the first review. Nonsubject imports held \*\*\* percent of the market in 2004.<sup>145</sup>

Despite the volume effects in the original investigation, we believe that changes in the conditions of competition, specifically with respect to declining U.S. consumption and the up-tick in demand from Asia, will limit the significance of subject import volume. There are currently three known producers of PCR in Japan: Denki, SDK, and Tosoh. While these producers did not participate in this review, the record indicates that they are export oriented, since total Japanese demand accounts for only 30 percent of the total Japanese capacity available.<sup>146</sup> From 1999 to 2003, Japanese production of PCR increased by 3 percent annually, exports increased by 6 percent annually from 1999-2004, and capacity increased by 2 percent annually, while the average sustainable capacity utilization rate was 89 percent.<sup>147</sup> The Japanese producers have identified and cultivated markets other than the United States in the more than three decades since the finding was made.<sup>148</sup> In 2004, Japanese producers shipped PCR to about 45 countries, of which 10 countries accounted for 83 percent of the total. China has grown into the largest Japanese export market, accounting for 15 percent of Japanese exports in 2004.<sup>149</sup> Chinese demand has increased in recent years, and worldwide demand for PCR is projected to increase for the first time in years due to increased Chinese demand.<sup>150</sup>

The Chinese government recently completed an antidumping investigation on imports of PCR from a number of countries, including Japan, the United States, and countries in Europe. Japanese producers' margins ranged from 2 to 151 percent; DDE received a margin of 151 percent; and the European producers received margins of 32 and 53 percent.<sup>151</sup> Two of the three Japanese producers, Denki and Tosoh, received margins of two and three percent, respectively, in the Chinese antidumping investigation, whereas SDK received a margin of 151 percent.<sup>152</sup> The effect of the antidumping duty order in China should be to continue to make China, one of the few growing PCR markets, an attractive outlet for the two Japanese producers who received low margins. Those producers, Denki and Tosoh,

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<sup>143</sup> USITC Pub. 3212 at 13. Commissioners Crawford and Askey dissented. They found that because the U.S. market is dominated by a single domestic producer and several nonsubject suppliers, and because markets other than the United States were the focus of the overwhelming majority of subject merchandise, that revocation of the antidumping finding was not likely to lead to an increase in the volume of subject imports such that the likely volume of subject imports would be significant within a reasonably foreseeable time. USITC Pub. 3212 at 23.

<sup>144</sup> CR, PR at Table I-1.

<sup>145</sup> CR, PR at Table I-2.

<sup>146</sup> CR, PR at Table IV-5.

<sup>147</sup> CR at IV-4, PR at IV-3.

<sup>148</sup> We note that Denki, despite being assigned a 0 percent margin during the 32 years that the finding has been in place, has not shipped significant amounts of PCR to the United States.

<sup>149</sup> CR at IV-4, PR at IV-3.

<sup>150</sup> CR at II-10, PR at II-5.

<sup>151</sup> CR at IV-6, PR at IV-4.

<sup>152</sup> CR at IV-6, PR at IV-4.

account for 80 percent of Japanese production.<sup>153</sup> Denki and Tosoh also stand to benefit from the reduction in supply of Chinese-produced PCR as a result of a fire at the plant of China's largest polychloroprene producer.<sup>154</sup>

We recognize that SDK's 151 percent dumping margin in China suggests a significant market entry barrier, making other markets, including the United States, more appealing to SDK. As noted above, SDK recently \*\*\*,<sup>155</sup> \*\*\*. However, SDA's U.S. shipments were to companies with which SDK had existing business relationships with other products, and SDA indicated that it had not engaged in any market research for the sale of PCR to other customers in the United States. These imports were of a certain grade of \*\*\*,<sup>156</sup>

Despite the relative attractiveness of the U.S. market for one Japanese producer, we believe that the proposed dramatic reduction in U.S. capacity will limit the impact of subject import volume on the U.S. industry upon revocation of the finding. DDE's planned closure of the Louisville facility, which will cut U.S. capacity by \*\*\*,<sup>157</sup> will limit U.S. supply, particularly for at least three types of PCR. Although DDE stated that there is a \*\*\*,<sup>158</sup> It is conceivable that purchasers will seek supply from foreign-based producers that are able to supply the range of PCR products. Consequently, subject import volume may not increase dramatically, if at all, for DDE's remaining product mix. Further, DDE's exports total \*\*\*, while its domestic shipments total \*\*\*. For DDE to maintain its current domestic shipment level, we calculate that DDE would have to reduce PCR exports by at least \*\*\* percent.<sup>159</sup> The high level of current exports suggests that foreign markets are important destinations for DDE's product. Indeed, at least one large customer, Gates, uses DDE products in a number of countries where it operates.<sup>160</sup> Therefore, given the apparent importance of export markets for DDE, together with contractual arrangements that may exist with current customers and the difficulties associated with qualifying new suppliers, we find it unlikely that DDE will be in a position to significantly reduce exports to existing customers. This suggests that any volume increases in subject imports would likely supplement, rather than displace, U.S. shipments.

We find it reasonable to conclude that while imports may increase somewhat upon revocation, the increase is not likely to have a significant impact or to cause material injury to the domestic PCR industry, given the fact that Japanese producers have found alternative markets for PCR, and due to the effects of the closing of a domestic facility. For all of the reasons noted above, we find that revocation of the antidumping finding is not likely to lead to an increase in the volume of subject imports such that the likely volume of subject imports would have a significant impact on the U.S. industry.

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<sup>153</sup> CR at IV-3, IV-2.

<sup>154</sup> Gates Prehearing Brief, attachment A.

<sup>155</sup> CR at IV-6, PR at IV-4.

<sup>156</sup> CR at II-8, PR at II-5.

<sup>157</sup> CR, PR at Table C-1. DDE's Posthearing Brief at 24.

<sup>158</sup> CR at II-2, PR at II-1.

<sup>159</sup> Exports would have to decline further if DDE is not able to operate at full capacity.

<sup>160</sup> Hearing transcript at 159.

## 2. Likely Price Effects of Subject Imports

In evaluating the likely price effects of subject imports if the antidumping finding is revoked, the Commission considers whether there is likely to be significant underselling by the subject imports as compared to domestic like product, and whether the subject imports are likely to enter the United States at prices that otherwise would have a significant depressing or suppressing effect on the price of domestic like products.<sup>161</sup>

In performing our analysis, we have considered the Commission's previous price findings. In the original investigation, the Commission found that the subject imports consistently undersold the domestic product and had a growing adverse impact on prices in the domestic market.<sup>162</sup> In the last five-year review, the Commission found that there was no evidence regarding Japanese prices in the U.S. market due to the virtual cessation of imports since 1973. However, the Commission found that the domestic industry provided evidence that Japanese producers likely would aggressively price their product in the United States if the finding were revoked.<sup>163</sup>

In this review, purchasers reported that the Japanese and domestic product were comparable.<sup>164</sup> However, given the low level of Japanese imports since the finding was put in place, the Commission was unable to obtain any direct price comparisons between the two products. The pricing data obtained indicates that DDE's prices and fairly traded Japanese imports<sup>165</sup> fluctuated \*\*\* and there were no apparent trends in prices.

DDE argues that Japanese pricing in other markets indicates that subject imports will adversely impact domestic PCR prices in the event of revocation of the finding.<sup>166</sup> However, it is unclear whether these examples involve comparable products, or whether there are significant differences in the product mix.<sup>167</sup> In addition to the lack of direct price comparisons, it is also difficult to assess accurately pricing either in the domestic or international market during the period of review based on the pricing data supplied by DDE given the fact that DDE has admitted to participating in an international price fixing scheme from August 1999 through April 2002. Part of that conspiracy involved \*\*\*.<sup>168</sup> It is not possible to reasonably assess what market prices would have been absent DDE's conspiracy to fix the prices on an international level, nor do we place weight on comparisons of pricing in international markets when the international price fixing investigations continue.

We recognize, however, that in this five-year review we must determine if Japanese prices would cause significant price effects if the finding were revoked. As discussed above, the conditions of competition have changed significantly since the original finding, and are likely to change in the future. Two conditions of competition, in particular, are likely to influence pricing in the U.S. market in the reasonably foreseeable future. One condition is the dramatic reduction in capacity in the U.S. market, particularly its effect on the three higher-valued products not currently produced at the Pontchartrain

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<sup>161</sup> 19 U.S.C. § 1675(a)(3).

<sup>162</sup> USITC Pub. 622 at 4.

<sup>163</sup> USITC Pub. 3212 at 14. In their dissenting views, Commissioners Crawford and Askey found that DDE had considerable power over domestic prices for polychloroprene, that raw material costs had declined while domestic prices remained stable and high, thereby rendering DDE's likely price suppression arguments unpersuasive. CR at 24.

<sup>164</sup> CR at II-15, PR at II-8.

<sup>165</sup> SDK, as a result of its joint-venture with DDE, was not subject to a dumping margin for its U.S. shipments until 2002, when the company was dissolved.

<sup>166</sup> *E.g.*, DDE's Posthearing Brief at 10.

<sup>167</sup> See, *e.g.*, Gates' Posthearing Brief at 7.

<sup>168</sup> DDE, post-hearing brief, at 5.

facility.<sup>169</sup> DDE's planned closure of the Louisville facility and its lack of concrete financing to produce a full PCR product line indicates that there will be a significant decline in domestic supply of PCR. This supply constraint will likely have a positive impact on domestic PCR prices as purchasers compete to obtain supply of needed PCR.

The second condition affecting price is that the majority of PCR purchasers require qualification of both a producer and plant before buying PCR, and that qualification can last as long as 18 months.<sup>170</sup> Given the expense and time involved in these qualifications, it is unlikely that purchasers will shift to buying from Japan rather than DDE just to obtain a slightly better price. Moreover, given these factors, purchasers in the United States will need to continue to seek second sources even for product that DDE has the capability to produce immediately in the Pontchartrain facility. Thus, it is unlikely that domestic prices will be adversely impacted given the decline in domestic supply. This would be particularly true for the higher valued products should DDE not \*\*\*. Consequently, we find that any increase in subject import volume will not likely lead to significant price depression or suppression within a reasonably foreseeable time.

### **3. Likely Impact of Subject Imports**

In evaluating the likely impact of imports of subject merchandise if the antidumping finding is revoked, the Commission considers all relevant economic factors that are likely to have a bearing on the state of the industry in the United States, including, but not limited to: (1) likely declines in output, sales, market share, profits, productivity, return on investments, and utilization of capacity; (2) likely negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital, and investment; and (3) likely negative effects on the existing development and production efforts of the industry, including efforts to develop a derivative or more advanced version of the domestic like product.<sup>171</sup>

In the original investigation, the Commission found that Japanese imports at less than fair value caused material injury to the domestic industry.<sup>172</sup> The Commission found that sales of subject imports at less than fair value contributed to the domestic industry's lost sales, lower profits, and loss of market share despite an increase in domestic demand. The Commission also determined that the increased sales of subject merchandise, which consistently sold below the domestic product, had a growing, adverse impact on prices in the domestic market.<sup>173</sup>

In the last five-year review, the Commission found that the industry as a whole had improved materially since the imposition of the finding. The industry asserted at that time that cessation of imports from Japan contributed to its ability to make needed investments to improve its production processes, resulting in improved safety and efficiency and higher production yields at lower costs. Consequently, the Commission did not find that the domestic industry was in a weakened state, as contemplated by the

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<sup>169</sup> DDE states that it has already started to build inventory to cover the transition time for customers. Transcript at 52. However, this is a short term solution for existing customers. The uncertainty created by the closure of the facility will lead customers to seek other suppliers for non-price reasons, particularly given the fact that DDE has announced the closure of the facility \*\*\* for manufacturing a full product line at the Pontchartrain facility. Moreover, even without taking product mix into account, the record indicates that DDE would have to significantly reduce its exports in order to supply the domestic market.

<sup>170</sup> CR at II-21, PR at II-12. DDE asserts that it intends to sell out of inventory to cover the qualification time, but as indicated, it has not even committed the funds to produce the higher valued products at the Pontchartrain facility.

<sup>171</sup> 19 U.S.C. § 1675(a)(4).

<sup>172</sup> USITC Pub. 622 at 3.

<sup>173</sup> USITC Pub. 622 at 4.

vulnerability criterion of the statute, given its strong operating performance and improved profitability.<sup>174</sup>

Currently, the industry has lost the profitability that it was experiencing during the last review, particularly during the latter part of the period. DDE's net sales quantities, values, and gross profits declined between 1999 and 2003, and increased between 2003 and 2004. Operating income as a percentage of net sales declined from \*\*\* percent in 1999 to \*\*\* percent in 2001, and then increased to \*\*\* percent in 2002. Operating income fell \*\*\* between 2002 and 2003, resulting in a \*\*\*. While it improved slightly between 2003 and 2004, the industry continued to experience \*\*\*. Some of the \*\*\* experienced were as a result of expenses associated with the antitrust investigation.<sup>175</sup> However, even if the costs incurred with the investigation are factored out, the industry still experienced \*\*\* in 2003 and 2004. While some of the condition of the domestic industry is clearly self-inflicted, we find that it is currently in a vulnerable state. We do note, however, that this is a mature industry which is taking steps to cut costs by closing a facility.

Notwithstanding the industry's current weakened condition, in conjunction with the finding regarding likely volume and price effects, we find that revocation is not likely to lead to a significant reduction in the U.S. producers output, sales, market share, profits, productivity, ability to raise capital, or return on investments within a reasonably foreseeable time. We therefore find that revocation of the finding on subject imports of PCR from Japan is not likely to lead to the continuation or recurrence of material injury to the domestic polychloroprene industry within a reasonably foreseeable time.

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<sup>174</sup> USITC Pub. 3212 at 17.

<sup>175</sup> CR, PR at Table III-6.





## PART I: INTRODUCTION AND OVERVIEW

### BACKGROUND

On July 1, 2004, the Commission gave notice, pursuant to section 751(c) of the Tariff Act of 1930 (the Act), that it had instituted a review to determine whether revocation of the antidumping finding on polychloroprene rubber (“PCR”) from Japan would likely lead to the continuation or recurrence of material injury to a domestic industry. On October 4, 2004, the Commission determined that it would conduct a full review pursuant to section 751(c)(5) of the Act. Information relating to the background and schedule of the review is provided in the following tabulation.<sup>1</sup>

Effective date	Action
December 6, 1973	Treasury’s antidumping finding (38 FR 33593)
July 1, 2004	Commission’s institution of review (69 FR 39961)
October 4, 2004	Commission’s decision to conduct a full review (69 FR 61403, October 18, 2004)
November 4, 2004	Commerce’s final results of expedited review (69 FR 64276)
December 22, 2004	Commission’s scheduling of the review (69 FR 78474, December 30, 2004)
May 3, 2005	Commission’s hearing <sup>1</sup>
June 14, 2005	Scheduled date for the Commission’s vote
June 27, 2005	Commission’s determination due to Commerce
<sup>1</sup> App. B contains the list of witnesses who appeared at the hearing.	

### The Original Investigation and the First Five-Year Review

On November 14, 1972, a petition was filed with Treasury and the Commission alleging that an industry in the United States was materially injured by reason of dumped imports of PCR from Japan.<sup>2</sup> On July 31, 1973, Treasury made a final affirmative dumping determination, with margins as follows:

Manufacturers/producers/exporters	Weighted-average margin (percent)
Denki Kagaku Kogyo K.K. (Denki)	0.00
Denki Kagaku Kogyo, K.K./Hoei Sangyo Co., Ltd.	55.00
Suzugo Corporation	55.00
All others	55.00

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<sup>1</sup> The Commission’s notice of institution, notice to conduct a full review, scheduling notice, and statement on adequacy appear in app. A and may also be found at the Commission’s web site (internet address [www.usitc.gov](http://www.usitc.gov)). Commissioners’ votes on whether to conduct an expedited or full review may also be found at the web site.

<sup>2</sup> The petition was filed by E.I. du Pont de Nemours & Co. of Wilmington, DE.

The Commission made its final affirmative injury determination on October 31, 1973, and Treasury issued an antidumping finding on December 6, 1973.

The Commission initiated a sunset review of PCR from Japan on August 3, 1998. On July 31, 1999, the Commission determined that revoking the existing antidumping finding on PCR from Japan would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time.<sup>3</sup>

Table I-1 presents a summary of data from the original investigation and from the 1999 review; table I-2 presents a summary of data from the current review; figure I-1 shows U.S. imports of PCR from Japan and total imports since 1972.

Data collected in the current review are for calendar years 1999-2004. The U.S. producer's share of the quantity of U.S. consumption declined from \*\*\* percent in 1999 to \*\*\* percent in 2004, and its share of the value of consumption declined from \*\*\* percent to \*\*\* percent. Japan's share of U.S. consumption \*\*\*.

While both the quantity and value of imports from Japan approximately doubled from 1999 to 2004, Japan still accounted for a small portion of the value of imports for any given year. The unit value of imports from Japan rose by 24.2 percent during the period 1999-2004 while unit values from countries other than Japan rose by 9.4 percent. The U.S. producer's capacity remained constant during the period, while production declined by \*\*\* percent.

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<sup>3</sup> *Polychloroprene Rubber from Japan*, Inv. No. AA1921-129 (Review), USITC Publication 3212, July 1999.

Table I-1

**PCR: Summary data from the original investigation and the 1999 review, 1970-72 and 1997-98**

(Quantity= 1,000 pounds; value= 1,000 dollars; unit values, unit labor costs,  
and unit financial data are *per pound*)

Item	1970	1971 <sup>1</sup>	1972	1997	1998
U.S. consumption: Quantity	( <sup>2</sup> )	***	***	***	***
Producers' share <sup>3</sup>	( <sup>2</sup> )	***	***	***	***
Importer's share: Japan <sup>3</sup>	( <sup>2</sup> )	***	***	***	***
All other countries <sup>3</sup>	( <sup>2</sup> )	***	***	***	***
Total imports <sup>3</sup>	( <sup>2</sup> )	***	***	***	***
U.S. consumption: Value	( <sup>2</sup> )	***	***	***	***
Producers' share <sup>3</sup>	( <sup>2</sup> )	***	***	***	***
Importer's share: Japan <sup>3</sup>	( <sup>2</sup> )	***	***	***	***
All other countries <sup>3</sup>	( <sup>2</sup> )	***	***	***	***
Total imports <sup>3</sup>	( <sup>2</sup> )	***	***	***	***
U.S. imports from-- Japan:					
Quantity	( <sup>2</sup> )	10,228	18,685	756	687
Value	( <sup>2</sup> )	3,888	8,027	1,221	1,193
Unit value	( <sup>2</sup> )	\$0.38	\$0.43	\$1.62	\$1.74
All other countries:					
Quantity	( <sup>2</sup> )	3,832	7,148	18,514	25,558
Value	( <sup>2</sup> )	809	1,995	27,311	32,955
Unit value	( <sup>2</sup> )	\$0.21	\$0.28	\$1.48	\$1.29
All countries:					
Quantity	( <sup>2</sup> )	14,060	25,833	19,270	26,245
Value	( <sup>2</sup> )	4,697	10,022	28,532	34,148
Unit value	( <sup>2</sup> )	\$0.33	\$0.39	\$1.48	\$1.30

Table continued on next page.

**Table I-1--Continued**

**PCR: Summary data from the original investigation and the 1999 review, 1970-72 and 1997-98**

Item	1970	1971 <sup>1</sup>	1972	1997	1998
U.S. producers'-- Capacity quantity	***	***	***	***	***
Production quantity	***	***	***	***	***
Capacity utilization <sup>3</sup>	***	***	***	***	***
U.S. shipments: Quantity	***	***	***	***	***
Value <sup>4</sup>	***	***	***	***	***
Unit value	\$***	\$***	\$***	\$***	\$***
Ending inventory quantity	***	***	***	***	***
Inventories/total shipments <sup>3</sup>	***	***	***	***	***
Production workers	( <sup>5</sup> )	( <sup>5</sup> )	( <sup>5</sup> )	***	***
Hours worked (1,000 hours)	***	***	***	***	***
Wages paid (1,000 dollars)	( <sup>5</sup> )	( <sup>5</sup> )	( <sup>5</sup> )	***	***
Hourly wages	( <sup>5</sup> )	( <sup>5</sup> )	( <sup>5</sup> )	\$***	\$***
Productivity (pounds per hour)	***	***	***	***	***
Net sales: Quantity	( <sup>5</sup> )	( <sup>5</sup> )	( <sup>5</sup> )	***	***
Value	***	***	***	***	***
Unit value	( <sup>5</sup> )	( <sup>5</sup> )	( <sup>5</sup> )	\$***	\$***
Cost of goods sold	***	***	***	***	***
Gross profit or (loss)	***	***	***	***	***
Operating income or (loss)	***	***	***	***	***
Unit cost of goods sold	( <sup>5</sup> )	( <sup>5</sup> )	( <sup>5</sup> )	\$***	\$***
Unit operating income or (loss)	( <sup>5</sup> )	( <sup>5</sup> )	( <sup>5</sup> )	***	***
Cost of goods sold/sales <sup>3</sup>	***	***	***	***	***
Operating income or (loss)/sales <sup>3</sup>	***	***	***	***	***

<sup>1</sup> The original staff report indicated that import statistics for 1971 were believed to be substantially understated (October 1973 staff report, table 5, fn. 1).

<sup>2</sup> Import data and market shares are not available prior to 1971.

<sup>3</sup> Reported data are in percent.

<sup>4</sup> Data reported for 1970-1972 are slightly understated because \*\*\*.

<sup>5</sup> Not available.

Note.—Because of rounding, figures may not add to the totals shown.

Source: Compiled from data submitted in response to Commission questionnaires and from official Commerce statistics.

Table I-2

**PCR: Summary data from the current review, 1999-2004**

(Quantity=1,000 pounds; value=1,000 dollars; unit values, unit labor costs,  
and unit financial data are *per pound*)

Item	1999	2000	2001	2002	2003	2004
U.S. consumption: Quantity	***	***	***	***	***	***
Producer's share <sup>1</sup>	***	***	***	***	***	***
Importer's share: Japan <sup>1</sup>						
Denki	***	***	***	***	***	***
All other	***	***	***	***	***	***
Total Japan	***	***	***	***	***	***
All other countries <sup>1</sup>	***	***	***	***	***	***
Total imports <sup>1</sup>	***	***	***	***	***	***
U.S. consumption: Value	***	***	***	***	***	***
Producer's share <sup>1</sup>	***	***	***	***	***	***
Importer's share: Japan <sup>1</sup>						
Denki	***	***	***	***	***	***
All other	***	***	***	***	***	***
Total Japan	***	***	***	***	***	***
All other countries <sup>1</sup>	***	***	***	***	***	***
Total imports <sup>1</sup>	***	***	***	***	***	***
U.S. imports from-- Japan:						
Quantity Denki	***	***	***	***	***	***
All other	***	***	***	***	***	***
Total Japan	613	1,060	1,629	2,053	688	1,184
Value Denki	***	***	***	***	***	***
All other	***	***	***	***	***	***
Total Japan	1,155	2,184	3,121	4,097	1,678	2,678

Table continued on next page.

**Table I-2--Continued**  
**PCR: Summary data from the current review, 1999-2004**

Item	1999	2000	2001	2002	2003	2004
Unit value Denki	\$***	\$***	\$***	\$***	\$***	\$***
All other	***	***	***	***	***	***
Total Japan	\$1.88	\$2.06	\$1.92	\$2.00	\$2.44	\$2.34
All other countries:						
Quantity	32,890	37,885	38,368	40,783	40,092	37,875
Value	34,700	39,977	41,845	43,797	43,890	43,729
Unit value	\$1.06	\$1.06	\$1.09	\$1.07	\$1.09	\$1.15
All countries:						
Quantity	33,503	38,944	39,997	42,836	40,779	39,058
Value	35,856	42,162	44,967	47,894	45,568	46,497
Unit value	\$1.07	\$1.08	\$1.12	\$1.12	\$1.12	\$1.19
U.S. producer's-- Capacity quantity	***	***	***	***	***	***
Production quantity	***	***	***	***	***	***
Capacity utilization <sup>1</sup>	***	***	***	***	***	***
U.S. shipments: Quantity	***	***	***	***	***	***
Value	***	***	***	***	***	***
Unit value	\$***	\$***	\$***	\$***	\$***	\$***
Ending inventory quantity	***	***	***	***	***	***
Inventories/total shipments <sup>1</sup>	***	***	***	***	***	***
Production workers	***	***	***	***	***	***
Hours worked (1,000 hours)	***	***	***	***	***	***
Wages paid (1,000 dollars)	***	***	***	***	***	***
Hourly wages	\$***	\$***	\$***	\$***	\$***	\$***
Productivity (pounds per hour)	***	***	***	***	***	***

Table continued on next page.

**Table I-2--Continued**

**PCR: Summary data from the current review, 1999-2004**

Item	1999	2000	2001	2002	2003	2004
Net sales:						
Quantity	***	***	***	***	***	***
Value	***	***	***	***	***	***
Unit value	\$***	\$***	\$***	\$***	\$***	\$***
Cost of goods sold	***	***	***	***	***	***
Gross profit or (loss)	***	***	***	***	***	***
Operating income or (loss)	***	***	***	***	***	***
Unit cost of goods sold	\$***	\$***	\$***	\$***	\$***	\$***
Unit operating income or (loss)	\$***	\$***	\$***	\$***	\$***	\$***
Cost of goods sold/sales <sup>1</sup>	***	***	***	***	***	***
Operating income or (loss)/sales <sup>1</sup>	***	***	***	***	***	***

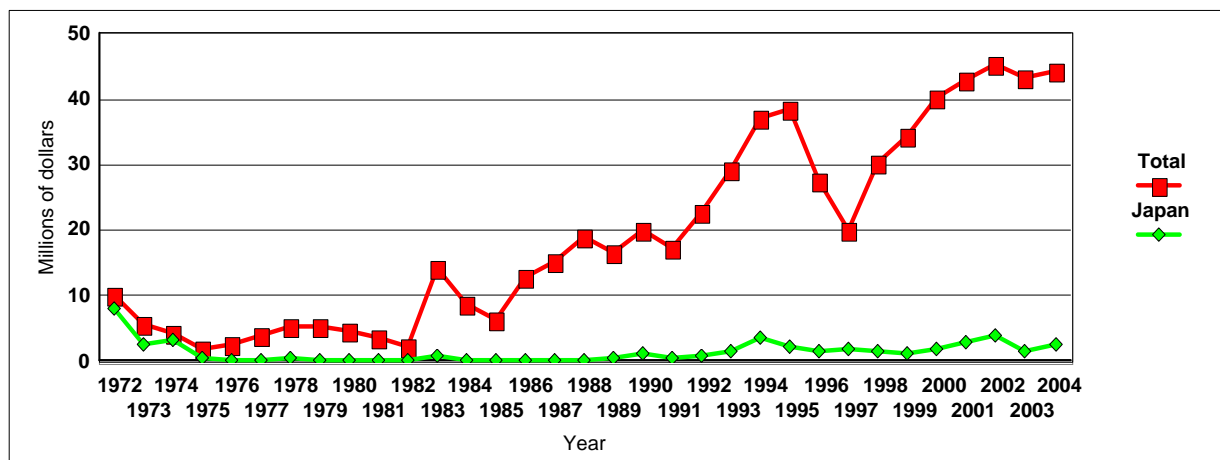
<sup>1</sup> In percent.

Note.—Because of rounding, figures may not add to the totals shown.

Source: Compiled from data submitted in response to Commission questionnaires and from official Commerce statistics.

**Figure I-1**

**PCR: U.S. imports from Japan and total imports, 1972–2004**



Source: Official statistics of U.S. Department of Commerce.

### Statutory Criteria and Data in the Report

Section 751(c) of the Act requires Commerce and the Commission to conduct a review no later than five years after the issuance of an antidumping or countervailing duty order or the suspension of an investigation to determine whether revocation of the order or termination of the suspended investigation

“would be likely to lead to continuation or recurrence of dumping or a countervailable subsidy (as the case may be) and of material injury.”

Section 752(a) of the Act provides that in making its determination of likelihood of continuation or recurrence of material injury--

*(1) IN GENERAL.-- . . . the Commission shall determine whether revocation of an order, or termination of a suspended investigation, would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. The Commission shall consider the likely volume, price effect, and impact of imports of the subject merchandise on the industry if the order is revoked or the suspended investigation is terminated. The Commission shall take into account--*

*(A) its prior injury determinations, including the volume, price effect, and impact of imports of the subject merchandise on the industry before the order was issued or the suspension agreement was accepted,*

*(B) whether any improvement in the state of the industry is related to the order or the suspension agreement,*

*(C) whether the industry is vulnerable to material injury if the order is revoked or the suspension agreement is terminated, and*

*(D) in an antidumping proceeding . . . , (Commerce’s findings) regarding duty absorption . . .*

*(2) VOLUME.--In evaluating the likely volume of imports of the subject merchandise if the order is revoked or the suspended investigation is terminated, the Commission shall consider whether the likely volume of imports of the subject merchandise would be significant if the order is revoked or the suspended investigation is terminated, either in absolute terms or relative to production or consumption in the United States. In so doing, the Commission shall consider all relevant economic factors, including--*

*(A) any likely increase in production capacity or existing unused production capacity in the exporting country,*

*(B) existing inventories of the subject merchandise, or likely increases in inventories,*

*(C) the existence of barriers to the importation of such merchandise into countries other than the United States, and*

*(D) the potential for product-shifting if production facilities in the foreign country, which can be used to produce the subject merchandise, are currently being used to produce other products.*

*(3) PRICE.--In evaluating the likely price effects of imports of the subject merchandise if the order is revoked or the suspended investigation is terminated, the Commission shall consider whether--*

*(A) there is likely to be significant price underselling by imports of the subject merchandise as compared to domestic like products, and*

*(B) imports of the subject merchandise are likely to enter the United States at prices that otherwise would have a significant depressing or suppressing effect on the price of domestic like products.*

*(4) IMPACT ON THE INDUSTRY.--In evaluating the likely impact of imports of the subject merchandise on the industry if the order is revoked or the suspended investigation is terminated, the Commission shall consider all relevant economic factors which are likely to have a bearing on the state of the industry in the United States, including, but not limited to--*



(A) likely declines in output, sales, market share, profits, productivity, return on investments, and utilization of capacity,  
 (B) likely negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital, and investment, and  
 (C) likely negative effects on the existing development and production efforts of the industry, including efforts to develop a derivative or more advanced version of the domestic like product.

*The Commission shall evaluate all such relevant economic factors . . . within the context of the business cycle and the conditions of competition that are distinctive to the affected industry.*

Information obtained during the course of the review that relates to the above factors is presented throughout this report. A summary of data collected in the review is presented in appendix C. U.S. industry data are based on the questionnaire response of DuPont Dow Elastomers L.L.C. (“DDE”), the sole U.S. producer of PCR during the period 1999-2004. U.S. import data are based on official statistics of the U.S. Department of Commerce, as there are no respondent interested parties participating in the review (although one Japanese producer provided limited information). Responses by the U.S. producer, importers, and purchasers of PCR, and one producer of PCR in Japan to a series of questions concerning the significance of the existing antidumping finding and the likely effects of revocation are presented in appendix D. Purchasers’ questionnaire responses accounted for all U.S. imports of PCR from Japan in 2004.

#### COMMERCE’S RESULTS OF EXPEDITED REVIEW

On November 4, 2004, Commerce found that revocation of the antidumping finding on PCR from Japan would likely lead to continuation or recurrence of dumping as follows:<sup>4 5</sup>

<b>Manufacturers/producers/exporters</b>	<b>Weighted-average margin (percent)</b>
Denki K.K.	0.00 <sup>6</sup>
Denki, K.K./Hoei Sangyo Co., Ltd.	55.00
Suzugo Corporation	55.00
All others	55.00

Commerce has not issued a duty absorption determination with respect to this order.

Staff inquired of the Department of Commerce why the major Japanese producer of PCR had a zero dumping margin through the history of the order, and was advised “\*\*\*.”<sup>7</sup>

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<sup>4</sup> Commerce’s notice is presented in app. A.

<sup>5</sup> “For 32 years Denki has not participated to any significant degree in the market. Certainly it is not the zero margin that’s at issue here, it’s the existence of the Order.” Hearing transcript, pp. 226-227 (Lipstein).

<sup>6</sup> Petitioners contend that the only reason that Denki K.K. has a zero antidumping margin is because \*\*\*. Petitioners’ posthearing brief, pp. 7-8.

<sup>7</sup> \*\*\*, International Trade Administration, e-mail to staff, May 19, 2005.

## COMMERCE'S ADMINISTRATIVE REVIEWS

Commerce has conducted numerous administrative reviews of the antidumping finding on PCR from Japan, as shown in the following tabulation:

Period of review	Date results published	Margin (percent)
July 1, 1973 - November 30, 1980 July 1973 - November 1980 April 1979 - November 1980	April 6, 1982 (47 FR 14746)	Denki, K.K..... 0 <sup>1</sup> Denki, K.K./ Hoei Sangyo Co., Ltd..... 55 Suzugo Corp..... 55
December 1, 1980 - November 30, 1981	March 8, 1983 (48 FR 9678)	Denki, K.K..... 0 <sup>1</sup> Suzugo Corp..... 55 <sup>1</sup> Denki, K.K./ Hoei Sangyo Co., Ltd..... 55 <sup>1</sup>
October 11, 1974 - January 1, 1980	March 22, 1984 (49 FR 10694-10695)	Denki, K.K..... 0 <sup>1</sup> Denki, K.K./Hoei Sangyo Co., Ltd..... 55 <sup>1</sup> Mitsui Bussan K.K..... 0 <sup>1</sup> Showa Neoprene, K.K..... 0 <sup>1</sup> Showa Neoprene, K.K./ Hoei Sangyo Co., Ltd..... 0 <sup>1</sup> Suzugo Corp..... 55 <sup>1</sup> Toyo Soda Manufacturing Co... 0 <sup>1</sup> Toyo Soda Manufacturing Co., Ltd./Hoei Sangyo Co., Ltd..... 0 <sup>1</sup>
December 1, 1982 - November 30, 1983	November 26, 1984 (49 FR 46454)	Denki, K.K..... 0 <sup>1</sup> Denki, K.K./ Hoei Sangyo Co., Ltd..... 55 <sup>1</sup> Mitsui Bussan K.K..... 0 <sup>1</sup> Showa Neoprene, K.K..... 0 Showa Neoprene, K.K./ Hoei Sangyo Co., Ltd..... 0 <sup>1</sup> Suzugo Corp..... 55 <sup>1</sup> Toyo Soda Manufacturing Co... .0 <sup>1</sup> Toyo Soda Manufacturing Co., Ltd./Hoei Sangyo Co., Ltd..... 0 <sup>1</sup>
December 1, 1993 - November 30, 1994	June 10, 1996 (61 FR 29344)	Denki..... 0 <sup>1</sup> Mitsui Bussan..... 0 <sup>1</sup> Tosoh..... 0 <sup>1</sup>
December 1, 1994 - November 30, 1995	December 20, 1996 (61 FR 67318)	Same as November 26, 1984
December 1, 1997 - November 30, 1998	July 23, 1999 (64 FR 39971)	Rescinded
December 1, 1998 - November 30, 1999	August 31, 2000 (65 FR 52985)	Rescinded
December 1, 1999 - October 31, 2000	August 27, 2001 (66 FR 45005)	Rescinded
December 1, 2002 - November 30, 2003	February 11, 2004 (69 FR 6642)	Rescinded
<sup>1</sup> No shipments during the period.		

## DISTRIBUTION OF CONTINUED DUMPING AND SUBSIDY OFFSET ACT FUNDS TO AFFECTED DOMESTIC PRODUCERS

DDE received funds as a result of the CDSOA (Byrd Amendment), in the amount of \$694,386 in FY2001, \$944,141 in FY 2002, and \$169,954 in FY 2004.

## THE SUBJECT PRODUCT

The imported product subject to the antidumping finding under review, as defined by Commerce, is “an oil resistant synthetic rubber also known as polymerized chlorobutadiene or neoprene, as covered by subheadings 4002.41.00, 4002.49.00, and 4003.00.00 of the Harmonized Tariff Schedule of the United States (HTS).”<sup>8</sup> HTS numbers are provided for convenience. The written description is dispositive.<sup>9</sup>

### Physical Characteristics and Uses

PCR was the first synthetic rubber polymer (elastomer) to be marketed commercially in the United States. It is based on the chlorination of butadiene, a petrochemical product. PCR is an extremely versatile synthetic rubber with over 70 years of proven performance in a broad industry spectrum, which testifies to its continuing demand by customers in specialty niche market areas commanding premium prices.<sup>10 11</sup> DuPont discovered PCR in 1930 and originally marketed the product as an oil-resistant substitute for natural rubber. A few years later, DuPont adopted the generic trade name “Neoprene” for its PCR, which is now sold in several solid grades and as liquid aqueous latex dispersions for use in thousands of applications in diverse environments.<sup>12 13</sup>

\*\*\*.<sup>14 15</sup> In 1996, DuPont merged its Neoprene business with Dow Chemical to form DDE, which is the only manufacturer of PCR in the United States<sup>16</sup> (the world’s largest market for PCR)<sup>17</sup> and is the world’s largest producer with a roughly \*\*\* percent capacity/market share.<sup>18</sup>

PCR has a balanced combination of properties that lead to its use in a myriad of applications, including resistance to degradation from sun, ozone, and weather; excellent performance in contact with oils and many chemicals; useful wide temperature range; outstanding physical toughness; resistance to burning (combustion) inherently better than hydrocarbon-exclusive rubbers; and outstanding resistance to damage caused by flexing and twisting.<sup>19</sup> PCRs are classified broadly by the industry as general purpose, adhesive, or latex types; they are sold to downstream compounders as dry solid chips or aqueous liquid

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<sup>8</sup> The normal trade relations duty applicable to Japan for each of the subheadings is free. For purposes of the statistical analyses contained herein, only the first two subheadings have been included. Commission staff has determined that the preponderance of imports under heading HTS subheading 4003.00.00 are shipments of rubber types other than polychloroprene, based on a telephone conversation with \*\*\*.

<sup>9</sup> 69 FR 64276, November 4, 2004.

<sup>10</sup> In general, it is not \*\*\* experience that changes in the prices of potential substitution products for PCR will affect the market price for PCR itself. \*\*\*.

<sup>11</sup> “PCR remains a very useful and important product in our economy. There is still a great need for it, and we expect there to be a continuing viable demand for neoprene over the next 15 to 30 years; it’s just that the demand for neoprene is less than it was 25 years ago.” Hearing transcript, p. 18 (van Ballegoie).

<sup>12</sup> “The Chemical Economics Handbook,” SRI International, January 2002.

<sup>13</sup> DDE product literature accessed at [www.dupont-dow.com](http://www.dupont-dow.com), together with information obtained by staff \*\*\*.

<sup>14</sup> These substitutes are ethylene-propylene diene elastomers (EPDM), chlorinated polyethylene (CPE), styrene butadiene rubber (SBR) latex, chlorosulfonated polyethylene (CSM), thermoplastic elastomers (TPEs), Kraton® elastomers, and water-based polyurethane. \*\*\*.

<sup>15</sup> The most obvious substitutions for PCR have already taken place during the last several decades; in addition, there are some modest new volume growth opportunities for PCR \*\*\*.

<sup>16</sup> Bayer closed its PCR plant in Houston, TX, in 1998, and now imports from its plant in Germany. \*\*\*.

<sup>17</sup> \*\*\*.

<sup>18</sup> \*\*\*.

<sup>19</sup> DDE product literature accessed at [www.dupont-dow.com](http://www.dupont-dow.com).

latex dispersions in a wide range of grades having diverse properties. PCR elastomers may be modified or co-polymerized with other chemical products such as sulfur, dichlorobutadienes, and methacrylic acid, to create speciality products having unique properties.<sup>20</sup> DDE manufactures PCRs for many end-use applications, as depicted in the following tabulation:<sup>21 22</sup>

<b>General end use</b>	<b>Selected final end-use applications</b>
------------------------	--

\*\*\*

\*\*\*

General purpose solid types of PCR are used in a variety of elastomeric applications, particularly in molded and extruded goods. The solid adhesive types are unusually adaptable to the manufacture of quick-setting and high-bond strength solvent-based adhesives. The latex types provide unique application processes and end uses in solventless adhesives, dipped goods, film, and other speciality applications. PCR compounders add other ingredients such as carbon black, fillers and extenders, oil, antioxidants, and curing accelerators (magnesium and zinc oxides); the resulting compounds may contain anywhere from 20 percent to as much as 50 percent PCR.

Alternatives to PCR by application<sup>23</sup> are shown in the following tabulation:<sup>24</sup>

<b>Product</b>	<b>Application</b>
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\*\*\*

\*\*\*

### Manufacturing Process<sup>25</sup>

PCR is produced by chlorinating butadiene, a petrochemical product, to yield chloroprene monomer, which, in turn, is polymerized to PCR by emulsion polymerization. DDE's LaPlace, LA, plant produces chloroprene monomer by a patented liquid-phase chlorination process \*\*\*.<sup>26</sup> DDE then transports by rail \*\*\* of crude monomer to its Louisville, KY plant for PCR polymer conversion.<sup>27</sup> The finished product is recovered in several grades of light colored solid chip and also as an aqueous latex emulsion of about 50-percent solids. Solid chip is \*\*\* before being \*\*\* to domestic customers or to

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<sup>20</sup> \*\*\* offers superior quality commanding price premiums versus \*\*\*, and is the \*\*\* in liquid dispersions. \*\*\*.

<sup>21</sup> \*\*\*.

<sup>22</sup> In adhesives, \*\*\* provides quick grab characteristics and rapid development of high cohesive strength without curing. In dipped medical gloves, \*\*\* provides an excellent balance of flexibility and cost without dermal irritation problems associated with natural rubber. \*\*\*.

<sup>23</sup> \*\*\*.

<sup>24</sup> Gates was the inventor of the EPDM belts, used frequently for automotive under-the-hood applications where heat resistance is a factor in developing belts that would last 100,000 miles or even for the life of the car, versus 50,000 to 60,000 miles for comparable PCR belts. EPDM also has excellent low temperature properties. Hearing transcript, p. 185 (Rusnack).

<sup>25</sup> Unless otherwise noted, reported information was obtained \*\*\*.

<sup>26</sup> During the 1994-95 period, DuPont \*\*\*, \*\*\*.

<sup>27</sup> DDE's monomer capability and technology allow it to \*\*\*.

ports.<sup>28</sup> Latex product is typically shipped in tank trucks, 55-gallon drums, and 1-ton intermediate bulk containers (“IBCs”) on flatbed trucks.<sup>29</sup>

The process is capital intensive, and the plants are designed exclusively for PCR production.<sup>30</sup> Chemical feedstocks, process intermediates, solvents, and byproducts include toxic, corrosive, and flammable materials. Butadiene, chlorine, caustic soda (sodium hydroxide), pentane solvent, chloroprene monomer, chlorinated butadiene intermediates and byproducts; hydrochloric acid byproduct; and byproduct brine (sodium chloride), must be dealt with environmentally. Many of the reaction vessels and storage tanks in the chloroprene monomer section of the plant are designed from exotic materials such as alloys of nickel, tantalum, and zirconium, and also housed in Teflon-lined vessels. Brine and other byproducts are \*\*\*. Organic byproducts from the polymerization section are \*\*\*.

PCR is sold principally to end users, with sales to distributors accounting for less than \*\*\* percent of total commercial shipments by quantity. However, sales to distributors have increased by \*\*\* percent during the period of review, even as total shipments have declined.<sup>31</sup>

### **DOMESTIC LIKE PRODUCT ISSUES**

In the original investigation, the Commission found the appropriate domestic like product to be an oil-resistant synthetic rubber also known as polymerized chlorobutadiene or neoprene, corresponding to the scope of the investigation.<sup>32</sup> In response to a question soliciting comments regarding the appropriate domestic like product in the Commission’s notice of institution of this review, none of the parties argued for the inclusion of other goods.

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<sup>28</sup> Bags must be stored and shipped as single stacked pallets to prevent undue pressures which can cause caking, fusion, or massing of the PCR chips.

<sup>29</sup> The LaPlace plant primarily manufactures \*\*\*. The Louisville plant produces \*\*\*. W grade was ranked \*\*\*; G grade, \*\*\*, was ranked \*\*\*.

<sup>30</sup> Feedstock and process energy costs (natural gas) all increased \*\*\* between the 4<sup>th</sup> quarter of 2002 and the 1<sup>st</sup> quarter of 2005. DDE purchases process steam \*\*\*. \*\*\*.

<sup>31</sup> \*\*\*.

<sup>32</sup> *Polychloroprene Rubber from Japan: Determination of Injury or Likelihood Thereof* (Inv. No. AA1921-129), TC Publication 622, November 1973.

## U.S. MARKET PARTICIPANTS

Participants in the U.S. market for PCR are shown in the following tabulation:

Bayer . . . . .	European producer of PCR.
DDE . . . . .	DuPont Dow Elastomers; joint venture between DuPont and Dow producing PCR in the United States.
DDE Japan . . .	DDE Japan K.K.; joint venture between SDK and DDE to market PCR and other elastomeric products. Joint venture ended in November 2002.
Denka Group .	Japanese industrial group consisting of Denki, 50 subsidiaries, and 52 affiliated companies.
Denki . . . . .	Denki K.K.; Japanese producer of PCR.
EniChem . . . .	EniChem owns a 50-percent stake in Polimeri Europa. Renamed Syndial S.p.A. in 2003.
Lanxess . . . . .	European producer of PCR and other chemicals, spun off from Bayer in July 2004.
Polimeri Europa	European producer of PCR.
SDA . . . . .	Showa Denko America; U.S. marketing arm of SDK.
SDEL . . . . .	Showa Denko Elastomers; new name for SDEM at the conclusion of the SDK-DDE joint venture. SDEL and SDK subsequently merged to be known as SDK.
SDEM . . . . .	Showa DDE Manufacturing K.K.; former joint venture between SDK and DDE which manufactured PCR in Japan. Joint venture ended in November 2002.
SDK . . . . .	Showa Denko K.K.; Japanese producer of PCR.
Syndial S.p.A.	Formerly EniChem, renamed in 2003.

DDE is the only U.S. producer of PCR. Only a limited number of firms export PCR from Japan to the United States, \*\*\* of which accounted for \*\*\* percent of U.S. imports from Japan in 2004: \*\*\*.

### U.S. Producers

PCR is manufactured in the United States exclusively by DDE in plants at LaPlace, LA, and Louisville, KY. The aggregate annual capacity of these two plants is quoted at \*\*\* pounds: \*\*\* pounds at Louisville and \*\*\* pounds at LaPlace.<sup>33 34</sup> DDE has been the sole U.S. producer of PCR since 1998, when Bayer closed its PCR plant in Houston, TX.

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<sup>33</sup> \*\*\*.

<sup>34</sup> DDE plans to \*\*\*.

In 1993, DuPont, which owned and operated the Louisville PCR facility prior to the creation of DDE, applied for state tax credits under the Kentucky Industrial Revitalization Act (“KIRA”), \*\*\*.<sup>35</sup>

On September 21, 2002, DDE announced plans to close the Louisville facility in 2005 and move the Neoprene manufacturing process to LaPlace.<sup>36</sup> Current plans are to \*\*\*.<sup>37</sup>

On January 3, 2005, DuPont and Dow announced that DuPont intends to exercise its option to acquire certain DDE assets. DuPont will purchase Dow’s remaining equity interest in the joint venture. Subject to regulatory approval, DuPont and Dow expect to close the transaction on June 30, 2005, at which time the entire venture will become a wholly owned subsidiary of DuPont.

### U.S. Importers

There is only a limited number of importers of PCR from Japan, \*\*\* of which accounted for \*\*\* of U.S. imports from Japan in 2004.

DDE had two joint ventures with Showa Denko K.K. (“SDK”) in Japan, which it terminated in November 2002 \*\*\*.<sup>38 39</sup> The joint ventures were (1) Showa DDE Manufacturing K.K. (“SDEM”), which manufactured Neoprene in Kawasaki, and (2) DDE Japan K.K. (“DDE Japan”) headquartered in Tokyo, which marketed Neoprene and other elastomeric products. SDEM was a \*\*\* joint venture between DDE and SDK; SDEM was the manufacturing arm of the joint venture, while DDE Japan was the marketing and selling arm. When the joint venture was dissolved, DDE sold its interest in SDEM to SDK, which in turn sold its interest in DDE Japan to DDE. On the same date (November 1, 2002), SDEM was renamed Showa Denko Elastomers (“SDEL”). SDK assumed the marketing and selling end of SDEL’s business. On January 1, 2004, SDK merged with SDEL, thus creating a single corporate entity by the name of SDK.<sup>40</sup> Since the dissolution of the joint venture, DDE imports no PCR from Japan.

Since the imposition of the antidumping finding, Japan is no longer the largest source of imports. In 2004, Germany and France provided 93 percent of the quantity and 90 percent of the value of imported PCR, while Japan provided 3 and 6 percent, respectively.

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<sup>35</sup> \*\*\*.

<sup>36</sup> Louisville Courier-Journal News, “History of Rubbertown,” October 26, 2003, found at Internet site <http://www.courier-journal.com/cjextra/2003projects/toxicair/1026/2wir-5-angsttime1026-6467.html>, March 29, 2005.

<sup>37</sup> \*\*\*.

<sup>38</sup> \*\*\*.

<sup>39</sup> Reportedly, when SDK was part of DDE’s business group it was by far the highest cost facility in the DDE operations, even with the raw material byproduct chlorine from its caustic process. DDE does not think it’s logical for SDK to stay in business; however, in DDE’s opinion, SDK remains in business because of the byproduct chlorine it has to find a way to consume. Hearing transcript pp. 130-131 (Austin). In 2004, SDK raised PCR prices twice (August & November) owing to inordinate increases in butadiene feedstock costs. Information accessed at SDK web-site [http://www.sdk.co.jp/index\\_e.htm](http://www.sdk.co.jp/index_e.htm), under news releases, 2004, May 5, 2005.

<sup>40</sup> On June 17, 2003, SDEL and SDK submitted a letter stating that they were the successor-in-interest to SDEM and DDE Japan and, as such, entitled to receive the same antidumping treatment as these companies. Accordingly, SDEL/SDK requested that the Department of Commerce (“Commerce”) conduct an expedited changed circumstances review of the antidumping duty finding on PCR from Japan pursuant to section 751(b)(1) of the Act and 19 CFR 351.221(c)(3)(ii) of the Department’s regulations. Commerce published a notice of preliminary results of its changed circumstances review on PCR from Japan in which it preliminarily determined that SDK was not the successor-in-interest to the joint venture of SDEM and DDE Japan (collectively, SDEM/DDE Japan joint venture). Subsequent to the preliminary findings, DDE concurred with the preliminary results. No additional comments were received by Commerce. Therefore, for the final results, Commerce found that SDK was not the successor-in-interest to the SDEM/DDE Japan joint venture. 69 FR 67890, November 22, 2004, presented in app. A.

## APPARENT U.S. CONSUMPTION AND MARKET SHARES

Apparent U.S. consumption of PCR declined by \*\*\* percent by quantity and by \*\*\* percent by value during 1999-2004 (table I-3). The U.S. producer's share of the quantity of consumption declined from \*\*\* percent in 1999 to \*\*\* percent in 2004, and its share of the value of U.S. consumption declined from \*\*\* percent to \*\*\* percent (table I-4). Japan's share of U.S. consumption \*\*\*, although the quantity of imports from Japan rose by 93 percent. The quantity of imports from countries other than Japan rose by 15 percent and their share of consumption rose from \*\*\* percent to \*\*\* percent. The unit value of U.S. imports other than from Japan rose by 9 percent while the unit values of U.S.-produced PCR \*\*\* those of these other imports (table I-2). The unit value of imports from Japan rose by 24.2 percent and \*\*\* than the U.S. producer's unit values, the premium ranging from \*\*\* percent in 1999 to \*\*\* percent in 2003.

**Table I-3**

**PCR: U.S. shipments of domestic product, U.S. imports, and apparent U.S. consumption, 1999-2004**

Item	1999	2000	2001	2002	2003	2004
<b>Quantity (1,000 pounds)</b>						
U.S. producer's U.S. shipments	***	***	***	***	***	***
U.S. imports from--						
Japan:						
Denki	***	***	***	***	***	***
All other	***	***	***	***	***	***
Total, Japan	613	1060	1629	2053	688	1183
Other countries	32889	37885	38368	40783	40092	37875
Total imports	33503	38944	39997	42836	40779	39058
Apparent U.S. consumption	***	***	***	***	***	***
U.S. producer's U.S. shipments	***	***	***	***	***	***
<b>Value (\$1,000)</b>						
U.S. imports from--						
Japan:						
Denki	***	***	***	***	***	***
All other	***	***	***	***	***	***
Total Japan	1155	2184	3121	4097	1678	2678
Other sources	34700	39977	41845	43797	43890	43729
Total imports	35856	42162	44967	47894	45568	46497
Apparent consumption	***	***	***	***	***	***
Source: Compiled from data submitted in response to Commission questionnaires and from official Commerce statistics.						



**Table I-4**  
**PCR: U.S. market shares, 1999-2004**

\* \* \* \* \*

**Table I-5**  
**PCR: Ratios of imports to U.S. production, 1999-2004**

\* \* \* \* \*



## PART II: CONDITIONS OF COMPETITION IN THE U.S. MARKET

### U.S. MARKET PARTICIPANTS AND SEGMENTS

DDE is the sole remaining U.S. producer of PCR after the closing of Bayer's Houston plant in July 1998. DDE produces PCR at two plants, Louisville, KY, and LaPlace, LA (the Pontchartrain facility). DDE was formed in 1996 as a joint venture by DuPont, Wilmington, DE, and Dow Chemical Co., Midland, MI, to combine Dow's innovative production process, Insite, with DuPont's market leadership in synthetic rubber. Sales of \$\*\*\* were predicted in its first year, and \$\*\*\* in five years, but results \*\*\* and sales of only \$\*\*\* were reported on March 14, 2005. The joint venture will be dissolved this year. Dow will retain the rights to its technology after an \$87 million payment by DuPont for Dow's interest in the company, which will change its name and become a DuPont subsidiary by June 30, 2005.<sup>1</sup>

DDE had a joint venture with Showa Denko K.K. ("SDK") in Japan, called Showa DDE Manufacturing K.K. ("SDEM"), but that company was dissolved on November 1, 2002, and DDE's U.S. imports from it ended in 2002. SDK became the sole owner of SDEM and eventually merged the manufacturing facilities into SDK. On January 1, 2004, SDK established a U.S. subsidiary, Showa Denko America ("SDA"), to \*\*\*.<sup>2</sup> Following the November 1, 2002, dissolution of SDEM, SDK requested Commerce to assign it the zero antidumping rate that had been assigned to SDEM. Commerce denied the request, considered SDK a new entity, and assigned it the "all others" antidumping rate of 55 percent.<sup>3</sup>

DDE expects that it will close its plant in Louisville, KY, in \*\*\*, and would consolidate operations in the Pontchartrain plant.<sup>4</sup> The Louisville facility \*\*\*. The Pontchartrain plant \*\*\*. There is a \*\*\*. Approximately \$\*\*\* in new investment would be required to make the necessary capital improvements, but \*\*\*. DDE \*\*\*. Capacity at the Pontchartrain plant is currently \*\*\* tons, and may increase to \*\*\* tons after the consolidation. DDE has already spent \*\*\*.<sup>5</sup>

There have been few imports of Japanese PCR since the 1973 finding, varying between \*\*\* and \*\*\* percent of the quantity of U.S. consumption during 1999-2004. The two major Japanese producers are Denki and Tosoh. The two major European producers, Bayer and Polimeri Europa,<sup>6</sup> are not subject to antidumping duties and have supplied substantial quantities of PCR to the United States. Bayer began supplying PCR from Germany in 2001. Polimeri Europa has supplied PCR from its facility in France throughout 1999-2004.

Following the closing of Bayer's U.S. plant, the \*\*\*. Its \*\*\*.

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<sup>1</sup> The News Journal, Business, March 17, 2005. Retrieved at <http://delarwareonline.com/news/journal/business/2005/01/04d>, March 17, 2005.

<sup>2</sup> \*\*\*. See, also, discussion later in this section.

<sup>3</sup> DDE \*\*\*, \*\*\*.

<sup>4</sup> This is an extension from its original statement that Louisville would cease operations in the latter part of 2005.

<sup>5</sup> \*\*\*.

<sup>6</sup> \*\*\*. See *Polychloroprene Rubber from Japan*, Inv. No. AA1921-129 (Review), USITC Publication 3212, July 1999. EniChem is now Syndial S.p.A. \*\*\*.

Producers and importers were asked to provide information on their shipments to various end users in 2004. The following tabulation (in *percent*) presents this information.<sup>1</sup>

<u>Item</u>	<u>DDE</u>	<u>Bayer</u>	<u>Polimeri</u>
Adhesives/sealants.....	***	***	***
Belts and hoses.....	***	***	***
Latex/dipped goods <sup>2</sup> .....	***	***	***
Wire and cable.....	***	***	***
Other.....	***	***	***

<sup>1</sup> \*\*\*, \*\*\*,

<sup>2</sup> DDE reports that \*\*\*.

DDE reported that its major customers in the United States in 2004 were \*\*\*.<sup>7</sup> \*\*\*.<sup>8</sup> \*\*\*.

DDE's description of market segments has sometimes distinguished between liquid and dry products, rather than the distinctions in the tabulation above. Liquid is described as lower valued and dry as higher valued. DDE alleges that the Japanese suppliers will target the higher valued DDE product line of dry products, rather than the lower value liquid product lines of the European suppliers.<sup>9</sup> However, these distinctions appear difficult to maintain as dry adhesives and dry GRI ("general rubber industry products") can be low valued or high valued, while wet products, such as latex, can be high valued.<sup>10</sup> Moreover, \*\*\*.<sup>11</sup>

## PRICE FIXING

On January 19, 2005, the U.S. Department of Justice announced that DDE agreed to plead guilty and pay an \$84 million fine, subject to court approval, for participating in an international conspiracy to fix the prices of PCR.<sup>12</sup> This is the first in an ongoing series of investigations of price fixing in the rubber industry. DDE was charged with conspiring with its competitors to fix the price of PCR in the United States and elsewhere from August 1999 to April 2002. In addition, DDE agreed to settle antitrust claims by customers for overcharging for PCR. In April 2004, DDE announced that DuPont had agreed to pay 100 percent of any liability of the joint venture up to \$150 million and 75 percent of any amount exceeding \$150 million.<sup>13</sup> This arrangement gives DuPont control of litigation strategy.<sup>14</sup> The effect on DDE's net income is discussed in part III.

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<sup>7</sup> \*\*\*.

<sup>8</sup> \*\*\*.

<sup>9</sup> \*\*\*.

<sup>10</sup> \*\*\*.

<sup>11</sup> \*\*\*. See discussion of subject imports product types later in this section.

<sup>12</sup> Found at web site, [http://www.usdoj.gov/atr/public/press\\_releases/2005/207231.wpd](http://www.usdoj.gov/atr/public/press_releases/2005/207231.wpd), on March 17, 2005.

<sup>13</sup> Found at web site, [http://www.cbgnetwork.org/home/Newsletter\\_KCB/KCB\\_150/kcb](http://www.cbgnetwork.org/home/Newsletter_KCB/KCB_150/kcb), on July 15, 2004.

<sup>14</sup> Bayer and Polimeri have been involved in pricing probes for various rubber products and chemicals to produce rubber. It is not clear to what extent Bayer has been involved in the PCR settlements. Polimeri, as an entity of Enichem, now Syndial, S.p.A., reached an agreement with the Department of Justice on May 2, 2005, and will pay a \$9 million fine associated with the price-fixing settlement. \*\*\*.

## CHANNELS OF DISTRIBUTION

The majority of shipments of PCR was made to end users and not to distributors in 2004. The following tabulation presents data on the distribution (in percent) of shipments of PCR in 2004.<sup>1</sup>

	<u>End users</u>	<u>Distributors</u>
DDE.....	***	***
Bayer.....	***	***
Polimeri.....	***	***

<sup>1</sup> \*\*\*; \*\*\*.

<sup>2</sup> Not reported.

## SUPPLY AND DEMAND CONSIDERATIONS

### U.S. Supply

#### Domestic Production

Based on available information, staff believes that DDE, the U.S. PCR producer, is likely to respond to changes in demand with moderate changes in shipments of U.S. PCR to the U.S. market. Factors contributing to this degree responsiveness of supply are discussed below.

#### *Industry capacity*

DDE's reported capacity utilization for PCR decreased from \*\*\* percent in 1999 to \*\*\* percent in 2004. This level of capacity utilization indicates that the U.S. producer has \*\*\* available capacity to increase production in the event of a price change.

During the 1980s and 1990s, DDE \*\*\* reduced its production capacity in response to the decline in global demand. Its capacity for 2005-06 will \*\*\*. This could likely \*\*\*. DDE plans to build up PCR inventory of about \*\*\*.<sup>15</sup>

#### *Alternative markets*

DDE's exports \*\*\*. In 2004, exports of \*\*\* pounds were \*\*\*. The unit values of exports were \*\*\* the unit values of DDE's domestic shipments. The \*\*\* level of exports during the period indicates that DDE may have the ability to shift shipments between the United States and other markets in response to price changes. On the other hand, DDE points out the presence of tariff and non-tariff barriers to PCR shipments, and the existence of \*\*\*. According to DDE, \*\*\*. On the other hand, \*\*\*.<sup>16</sup>

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<sup>15</sup> \*\*\*.

<sup>16</sup> \*\*\*.

DDE reported that, after the consolidation of its domestic plants, production capacity would decrease from a total capacity of \*\*\*. Although DDE's export shipments have \*\*\*,<sup>17</sup> Its domestic shipments of around \*\*\* million pounds in recent years \*\*\*. Bayer reported \*\*\*,<sup>18</sup> \*\*\*,<sup>19</sup> \*\*\*,<sup>20</sup> \*\*\*,<sup>21</sup>

### ***Inventory levels***

The level of inventories relative to domestic shipments indicates that the U.S. producer is able to respond to changes in demand with relatively \*\*\* changes in the quantity shipped. Domestic inventories of PCR were \*\*\* percent of DDE's domestic shipments in 1999, and increased to \*\*\* percent of its domestic shipments in 2004.

### ***Production alternatives***

DDE reports that \*\*\*. Polymerization reactor capacity \*\*\*.

### ***Subject Imports***

There is very little data on the Japanese PCR industry. Information on total capacity is available; however, no information on shipments and inventories has been received. World capacity to produce PCR was reported to be 680 million pounds in 2003.<sup>22</sup> \*\*\*. Japanese capacity reportedly will \*\*\*,<sup>23</sup>

DDE argues that there is excess global capacity in the face of declining global demand. It maintains that \*\*\*,<sup>24</sup> This was in \*\*\* percent during this period.<sup>25</sup>

Data from Japanese producers on Japanese capacity utilization are not available, and it is unclear how much production could be shifted to the U.S. market. DDE argues that because of SDK's previous association with DDE it can enter the U.S. market with the same product mix as DDE's, and be very effective in capturing market share from DDE, especially for the higher valued dry products.<sup>26</sup> On the other hand, \*\*\*,<sup>27</sup> \*\*\*,<sup>28</sup>

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<sup>17</sup> \*\*\*.

<sup>18</sup> \*\*\*.

<sup>19</sup> \*\*\*.

<sup>20</sup> \*\*\*.

<sup>21</sup> \*\*\*.

<sup>22</sup> International Institute of Synthetic Rubber Producers, Inc. ("IISRP"), Worldwide Rubber Statistics 2003.

<sup>23</sup> \*\*\*.

<sup>24</sup> Denki indicated in a letter from its counsel, that \*\*\*. Letter from Donald B. Cameron, March 4, 2005, p. 1.

<sup>25</sup> \*\*\*.

<sup>26</sup> \*\*\*.

<sup>27</sup> \*\*\*.

<sup>28</sup> \*\*\*. \*\*\*.

## Nonsubject Imports

Nonsubject imports have been substantial, ranging from 32.9 million pounds to 40.8 million pounds annually during 1999-2004. In 2004, Bayer's production capacity was \*\*\* pounds, and Polimeri Europa's was \*\*\* pounds.<sup>29</sup> Bayer's capacity was expected to increase in 2005 by \*\*\* pounds.<sup>30</sup>

## Effects of Revocation on Supply

DDE strongly supports the continuation of the antidumping finding currently in place for PCR from Japan, especially given the allegedly \*\*\*.<sup>31</sup> According to DDE, revocation of the finding will lead to aggressive reentry of the Japanese into the U.S. market, and cause material injury to the domestic PCR industry. DDE expects a decline of \$\*\*\*. According to DDE, Japanese suppliers allegedly will \*\*\*. DDE stated that the Japanese product allegedly is \*\*\*. DDE claims that \*\*\*.

According to DDE, these allegedly adverse conditions are especially critical \*\*\*, which will likely become the sole remaining production facility in the United States. It currently \*\*\* there, and \*\*\* of \$\*\*\* to \*\*\*. DDE states that it may have \*\*\*.<sup>32</sup>

## U.S. Demand

Based on available information, PCR consumers are likely to respond to changes in the price of PCR with small changes in their purchases of PCR. Performance characteristics of PCR and its alternatives, processing and development costs, and environmental concerns seem to be more important than slight changes in price.

## Demand Characteristics

DDE described many end uses for the PCR it manufactures and this information is presented in Part I of this report. DDE indicated that for any end-use product, around \*\*\* percent of the total cost, plus or minus 10 percent, is accounted for by PCR, although this estimate depends on a host of factors involving its customers' internal production cost structure.

## Demand Trends

Demand for PCR has declined in recent years. The IISRP reports that world consumption of PCR has declined from approximately 640 million pounds in 1999 to 630 million pounds in 2003. IISRP forecasts world consumption to be 675 million pounds in 2008.<sup>33</sup>

DDE reports that global demand for PCR declined by \*\*\* percent from \*\*\* pounds in 1979 to \*\*\* pounds in 2003, or at an annual rate of \*\*\* percent.<sup>34</sup> Similarly, it is reported that U.S. demand decreased by \*\*\* percent from \*\*\* pounds in 1979 to \*\*\* pounds in 2003, or at an annual rate of

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<sup>29</sup> \*\*\*.

<sup>30</sup> \*\*\*.

<sup>31</sup> \*\*\*.

<sup>32</sup> \*\*\*. With minor differences in magnitudes, these are the results predicted in the previous review investigation, *Polychloroprene Rubber from Japan, Inv. No. AA1921-129 Review*, USITC Publication 3212, July 1999, pp. II-9 to II-10.

<sup>33</sup> IISRP, *Worldwide Rubber Statistics*, 2000 and 2004.

<sup>34</sup> \*\*\*.

\*\*\* percent. DDE anticipates \*\*\* percent over the next decade. \*\*\* DDE's forecast of \*\*\* percent per year after 1996 from the previous review investigation.<sup>35</sup>

While purchasers generally considered demand for their products containing PCR to be unchanged or increasing when they reported on their end uses, five of nine purchasers reported that demand for PCR had increased, three purchasers reported that it had decreased, and one that it was unchanged. \*\*\* reported increases resulting from growth in the automotive and industrial sectors, or increases in specific applications such as \*\*\*. \*\*\* said that growth in the EPDM roofing industry had increased demand for PCR; \*\*\* said that demand had increased along with customer demand. \*\*\* noted decreased demand as a result of performance and price. \*\*\* saw declining demand from movement to other materials.

## Substitute Products

Producers and importers were requested to provide information on the existence of any products that could be substituted for PCR. Possible substitute products are ethylene-propylene diene elastomers (EPDM), chlorinated polyethylene (CPE), SBR latex, chlorosulfonated polyethylene (CSM), thermoplastic elastomers (TPE), Kraton® elastomers, and water-based polyurethane. End uses in which these substitutes could be used are presented in Part I of this report.

Substitution for PCR has been occurring since 1973 and in some uses the substitution has been \*\*\*.<sup>36</sup> EPDM has \*\*\*. Substitution for \*\*\*. In the next 10-12 years, \*\*\*.<sup>37</sup>

DDE observes that, while prices are one of the factors contributing to substitution dynamics, other important factors include changing application performance needs, total system costs, and availability of supply of substitute products. During the 2002-12 period, DDE forecasts that there will be a \*\*\* decrease in PCR in \*\*\* applications because of the substitution of \*\*\*, and an additional \*\*\* pounds will be lost in the \*\*\* applications in the same period because of substitution by \*\*\*.

The reporting purchasers largely indicated that there have not been changes in the end uses of PCR since 1973. Only \*\*\* reported that \*\*\* have moved to NBR-PVC<sup>38</sup> blends during 1990-2000, and that some \*\*\* have moved to TPE during 1993-2004. Reporting purchasers collectively did not anticipate any future changes. However, when asked to list substitute products and their uses, \*\*\* reported that EPDM rubbers were substitutes for belts and hoses in automotive applications, and \*\*\* for industrial applications. \*\*\* indicated that NBR substituted for some automotive applications, while \*\*\* said that styrenic copolymers substituted for \*\*\*. \*\*\* is not an end user, but reported that NBR/PVC, PCR/SBR blends, and CPE were substitutes for load bearings in bridges, in chemical resistance, and soles of shoes. \*\*\* reported that EPDM substituted in products that are exposed to weather that do not need to be oil resistant. \*\*\* reported that NBR-PVC blends could be used in \*\*\*, and TPEs in \*\*\*. \*\*\*<sup>39</sup> reported TPR and CAN as substitutes, but did not provide examples. Only \*\*\* reported that the price of these substitute products affected the price of PCR. \*\*\* and \*\*\* reported that there had been changes in the products that may be substituted for PCR because \*\*\* has developed patent technology for EPDM belt construction, which it has introduced to the market, while \*\*\* reported \*\*\* and \*\*\*. \*\*\*.

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<sup>35</sup> *Polychloroprene Rubber from Japan*, (Inv. No. AA1921-129 (Review), USITC Publication 3212, July 1999, p. II-16.

<sup>36</sup> \*\*\*.

<sup>37</sup> \*\*\*.

<sup>38</sup> Acrylonitrile-butadiene rubber (Nitrile), NBR, is a rubber which can withstand high temperatures. PVC is polyvinyl chloride.

<sup>39</sup> A \*\*\*.



## **Cost Shares**

In general, PCR accounts for a varying amount of the total cost of the end product in which it is used. Price changes for PCR will likely have a moderate effect on consumption because PCR can account for a relatively significant percentage of the total cost of the end products in which it is used. Purchasers were also asked to provide information on the cost share of PCR relative to the end products in which it is used. Nine purchasers provided such information and the cost shares ranged from 8 to 100 percent. Cost share information and trends in demand for end-use applications reported by purchasers are summarized in the following tabulation.

\*       \*       \*       \*       \*       \*       \*

## **Effects of Revocation on Demand**

\*\*\* reported that it believed that revocation of the antidumping finding would add to the diversity of the supply base, and provided an analysis of potential effects. \*\*\* viewed revocation as a general improvement, while \*\*\* reported that it would look at the opportunities presented, especially if tests are favorable and they are able to purchase at lower costs.

## **SUBSTITUTABILITY ISSUES**

The degree of substitution between domestic and imported PCR depends upon such factors as relative prices, quality (e.g., grade standards, reliability of supply, defect rates, etc.), and conditions of sale (e.g., price discounts/rebates, lead times between order and delivery dates, payment terms, product services, etc.). Based on available data, staff believes that there is a moderate level of substitutability between domestically produced PCR and PCR imported from Japan and other sources.

## **Factors Affecting Purchasing Decisions**

Purchasers were asked to identify the three major factors considered by their firm in deciding from whom to purchase PCR (table II-1). Five of the 12 responding firms reported that quality was the most important factor; the most commonly cited second-most-important factors were price and availability; availability was also the most-commonly cited third most important factor according to three firms. Other factors reported by at least one firm as the most important factor were customer preference, contracts, and tradition, while at least one firm reported reliability, delivery time, and service as second or third factors.

**Table II-1****PCR: Most important factors in selecting a supplier, as reported by purchasers**

Factor	First	Second	Third
Quality <sup>1</sup>	5	1	1
Price	2	5	2
Availability	1	3	4
Reliability	-	1	-
Delivery time	-	1	-
Service	-	-	1
Other <sup>2</sup>	4	-	-
<sup>1</sup> Quality includes factors such as product consistency, performance characteristics, technical standards, etc. <sup>2</sup> Other includes factors such as customer preference, contracts, tradition, etc.			
Source: Compiled from data submitted in response to Commission questionnaires.			

Purchasers were asked what factors determined the quality of PCR. Quality is a critical factor for most users of PCR and factors included: consistency and viscosity, mixing parameters and processing, moisture content and crystallinity, elongation and tensile strength, solubility and handling, variability of standards, contamination, and volatile ingredients.

Purchasers were asked if they always, usually, sometimes, or never purchased the lowest priced PCR. No purchasers reported always purchasing the lowest priced product; two usually purchased the lowest priced product; eight sometimes purchased the lowest priced product; and two purchasers never purchased the lowest priced product. Purchasers were also asked if they purchased PCR from one source although a comparable product was available at a lower price from another source. Seven purchasers responded affirmatively. Reasons provided included: testing required was too costly to justify the cost savings; quality, consistency, lead time, and supplier relationships; processing characteristics and availability; reliability of supply; and tight specifications, cost, duty, or freight.

Purchasers were asked to rate the importance of 15 factors in their purchasing decisions (table II-2). Availability, lower price, product consistency, quality meets industry standards, and reliability of supply were all cited as very important factors by a majority of purchasers. Thirteen purchasers reported that reliability of supply and product consistency were very important; 12 responding purchasers rated availability and lower price as very important; and 11 reported that quality meets industry standards.

Purchasers were asked for a country-by-country comparison on the same 15 factors. For the U.S. product compared to the Japanese product, most purchasers reported that the two products were comparable (table II-3). Only one factor, lower U.S. transportation costs, had a majority of (three of four) firms reporting that the U.S. product was superior. Two of four firms reported that the U.S. product was inferior with respect to lower price (i.e., the price of the domestic product was higher than that of the Japanese product), while one firm reported that the price of the domestic product was lower.

For the U.S. product compared with the German product, most purchasers reported that the two products were comparable (table II-4). However, five of six purchasers reported that the U.S. product was inferior with respect to lower price (i.e., the price of the domestic product was higher than that of the German product). The U.S. product received some superior marks compared with the German product for product availability, delivery time, product range, and lower transportation costs.

For the U.S. product compared with the Italian product, most purchasers reported that the two products were comparable (table II-5). However, four of five purchasers reported that the U.S. product was inferior with respect to lower price (i.e., the price of the domestic product was higher than that of the

Italian product). The U.S. product received some superior marks compared with the Italian product for product availability, delivery time, reliability of supply, and technical support.

**Table II-2**

**PCR: Importance of purchase factors, as reported by purchasers**

<b>Factor</b>	<b>Very important</b>	<b>Somewhat important</b>	<b>Not important</b>
	<b><i>Number of firms responding</i></b>		
Product availability	12	1	-
Delivery terms	2	8	3
Delivery time	6	7	-
Discounts offered	4	8	-
Extension of credit	1	7	5
Lower price	12	1	-
Minimum quantity requirements	-	11	2
Packaging	3	10	-
Product consistency	13	-	-
Quality meets industry standards	11	2	-
Quality exceeds industry standards	6	6	1
Product range	3	10	-
Reliability of supply	13	-	-
Technical support/service	8	5	-
Lower U.S. transportation costs	1	11	1
Note.—Not all companies gave responses for all factors.			
Source: Compiled from data submitted in response to Commission questionnaires.			

Table II-3

PCR: Comparisons of the U.S. and Japanese products, as reported by purchasers

Factor	U.S. vs Japan		
	S	C	I
	<i>Number of firms responding</i>		
Product availability	-	4	-
Delivery terms	1	2	-
Delivery time	2	2	-
Discounts offered	-	3	1
Extension of credit	-	4	-
Lower price <sup>1</sup>	1	1	2
Minimum quantity requirements	-	3	1
Packaging	-	4	-
Product consistency	-	4	-
Quality meets industry standards	-	4	-
Quality exceeds industry standards	-	4	-
Product range	-	4	-
Reliability of supply	-	4	-
Technical support/service	2	2	-
Lower U.S. transportation costs	3	1	-
<sup>1</sup> A rating of superior means that the price of the first-listed country's product is generally lower. A rating of inferior means that the first-listed country's product is generally higher.  Note.--S=first listed country's product is superior; C=both countries' products are comparable; I=first listed country's product is inferior.  Note.--Not all companies gave responses for all factors.  Source: Compiled from data submitted in response to Commission questionnaires.			

Table II-4

PCR: Comparisons of U.S. and German products, as reported by purchasers

Factor	U.S. versus Germany		
	S	C	I
	<i>Number of firms responding</i>		
Product availability	2	2	1
Delivery terms	-	6	-
Delivery time	3	4	-
Discounts offered	-	5	1
Extension of credit	-	6	-
Lower price <sup>1</sup>	-	1	5
Minimum quantity requirements	-	5	1
Packaging	-	6	-
Product consistency	-	5	1
Quality meets industry standards	-	5	1
Quality exceeds industry standards	-	5	1
Product range	3	3	1
Reliability of supply	1	3	1
Technical support/service	1	4	1
Lower U.S. transportation costs	3	3	-
<sup>1</sup> A rating of superior means that the price of the first-listed country's product is generally lower. A rating of inferior means that the first-listed country's product is generally higher.  Note.--S=first listed country's product is superior; C=both countries' products are comparable; I=first listed country's product is inferior.  Note.--Not all companies gave responses for all factors.  Source: Compiled from data submitted in response to Commission questionnaires.			

Table II-5

PCR: Comparisons of the U.S. and Italian products, as reported by purchasers

Factor	U.S. vs Italy		
	S	C	I
	Number of firms responding		
Product availability	4	1	-
Delivery terms	1	4	-
Delivery time	3	2	-
Discounts offered	-	3	2
Extension of credit	-	4	1
Lower price <sup>1</sup>	1	-	4
Minimum quantity requirements	-	3	2
Packaging	-	4	1
Product consistency	1	4	-
Quality meets industry standards	1	4	-
Quality exceeds industry standards	1	4	-
Product range	2	3	-
Reliability of supply	4	1	-
Technical support/service	3	2	-
Lower U.S. transportation costs	1	2	2
<sup>1</sup> A rating of superior means that the price of the first-listed country's product is generally lower. A rating of inferior means that the first-listed country's product is generally higher.  Note.--S=first listed country's product is superior; C=both countries' products are comparable; I=first listed country's product is inferior.  Note.--Not all companies gave responses for all factors.  Source: Compiled from data submitted in response to Commission questionnaires.			

Purchasers were asked if certain grades, types, or sizes of PCR were available from a single source. Five of the 12 responding purchasers reported that they were not, while seven purchasers reported that certain grades, types, or sizes were only available from a single source. \*\*\*, \*\*\*, \*\*\* from the United States. \*\*\* of grades.

Purchasers were asked if they required certification or prequalification for PCR. Eleven of the 12 responding purchasers required certification or prequalification. This aspect is extremely important to most purchasers. All of the 11 required it for all of their purchases in 2004. Qualification procedures for \*\*\*, \*\*\* also have rigorous testing and trials. Most purchasers also require international standards, such as ISO, QS, and TS standards.

Eleven purchasers reported factors they considered in qualifying a new supplier. \*\*\*. Its final \*\*\*, including financial condition of the company. This process typically takes up \*\*\*, \*\*\*. It can \*\*\* weeks. \*\*\*, \*\*\*, \*\*\*. It takes a minimum of 3 months to qualify a new supplier. \*\*\*, \*\*\*, \*\*\*.

Purchasers were asked if any suppliers had failed to qualify their product or lost their approved status since 1973. Three of the 12 responding firms reported that suppliers had failed to qualify. \*\*\*. \*\*\*, \*\*\* product line.

Purchasers were asked a number of questions about whether their purchasing patterns for PCR from subject and nonsubject sources had changed since 1973. All of the 13 responding purchasers reported that they had not purchased PCR from Japan before 1973, or they did not know. When asked about purchases from nonsubject countries, seven of these reported no change in their purchasing pattern, while \*\*\*.

Purchasers were asked how frequently they and their customers purchased PCR from specific producers and from specific countries. In general, purchasers reported that neither the country of origin nor the producer are that important in their purchasing decisions (see tabulation below).

<u>Purchaser decisions</u>	<u>Always</u>	<u>Usually</u>	<u>Sometimes</u>	<u>Never</u>
Purchaser makes decision based on producer .....	-	3	2	8
Purchaser's customer makes decision based on producer ...	-	2	1	10
Purchaser makes decision based on country .....	-	1	1	11
Purchaser's customer makes decision based on country .....	-	-	2	11

Six of the 13 responding purchasers contacted 2 or more suppliers before making a purchase, with 6 firms contacting only one supplier, and 2 contacting three suppliers. Most purchasers, 9 of the 12 responding, reported that they had not changed suppliers in the last five years.

### **Lead Times**

Lead times for DDE \*\*\* weeks if produced to order. \*\*\* from inventory, and \*\*\*. Bayer reported \*\*\*. Polimeri sold \*\*\*.

### **Comparisons of Domestic Products, Subject Imports, and Nonsubject Imports**

Producers, importers, and purchasers were asked to report how frequently PCR from different countries was used in the same applications (table II-6). If purchasers reported that products from different countries were not always used in the same application, they were asked to explain why. Four firms reported reasons for differences. \*\*\*, \*\*\*, \*\*\*, \*\*\*.

Table II-6

**PCR: U.S. producer's, importers', and purchasers' perceived degree of interchangeability of products produced in the United States and other countries<sup>1</sup>**

Country comparison	U.S. producer					U.S. importers					U.S. purchasers				
	A	F	S	N	O	A	F	S	N	O	A	F	S	N	O
U.S. vs. Japan	***	***	***	***	***	***	***	***	***	***	-	2	2	1	7
U.S. vs. nonsubject	***	***	***	***	***	***	***	***	***	***	1	2	2	-	6
Japan vs. nonsubject	***	***	***	***	***	***	***	***	***	***	-	1	2	-	9

<sup>1</sup> The producer, importers, and purchasers were asked if PCR produced in the United States and in other countries is used interchangeably.

Note: "A" = Always, "F" = Frequently, "S" = Sometimes, "N" = Never, and "O" = No familiarity.

Source: Compiled from data submitted in response to Commission questionnaires.

The producer and importers were asked to assess how often differences other than price were significant in sales of PCR from the United States, subject countries, or nonsubject countries (table II-7). DDE reported that differences other than price were \*\*\*, but that it was \*\*\*. Importers, including DDE, reported that differences other than price were \*\*\*, or that \*\*\*. Two importers reported that differences other than price were \*\*\*, and one importer that differences were \*\*\* significant. One importer reported that differences other than price were \*\*\*, and two importers that they were \*\*\*.

Table II-7

**PCR: U.S. firms' perceived significance of differences other than price between PCR produced in the United States and PCR produced in other countries<sup>1</sup>**

Country comparison	U.S. producer					U.S. importers				
	A	F	S	N	O	A	F	S	N	O
U.S. vs. Japan	***	***	***	***	***	***	***	***	***	***
U.S. vs. nonsubject	***	***	***	***	***	***	***	***	***	***
Japan vs. nonsubject	***	***	***	***	***	***	***	***	***	2

<sup>1</sup> The producer and importers were asked if differences other than price between PCR produced in the United States and in other countries were a significant factor in their sales of the products.

Note.--"A" = Always, "F" = Frequently, "S" = Sometimes, "N" = Never, "O"=No familiarity.

Source: Compiled from data submitted in response to Commission questionnaires.

## ELASTICITY ESTIMATES

This section discusses elasticity estimates. Parties were requested to provide comments in their prehearing briefs. DDE argued that the U.S. and Japanese products are highly substitutable and that the elasticity range of 4-6 from the Commissions first review was more appropriate than the moderate



elasticity suggested by the staff in the current investigation with a range of 3-5.<sup>40</sup> Gates believed that the moderate elasticity of substitution with a range of 3-5 was appropriate.<sup>41</sup>

### **U.S. Supply Elasticity<sup>42</sup>**

The domestic supply elasticity for PCR measures the sensitivity of the quantity supplied by U.S. producers to changes in the U.S. market price of PCR. The elasticity of domestic supply depends on several factors including the level of excess capacity, the ease with which producers can alter capacity, producers' ability to shift to production of other products, the existence of inventories, and the availability of alternate markets for U.S.-produced PCR. Earlier analysis of these factors indicates that the U.S. industry has a moderate ability to increase or decrease shipments to the U.S. market; an estimate in the range of 2 to 4 is suggested.

### **U.S. Demand Elasticity**

The U.S. demand elasticity for PCR measures the sensitivity of the overall quantity demanded to a change in the U.S. market price of PCR. This estimate depends on factors discussed earlier such as the existence, availability, and commercial viability of substitute products, as well as the component share of PCR in the production of any downstream products. Based on the available information, the aggregate demand for PCR is likely to be in a range of -0.5 to -1.5. Purchasers would not likely be very sensitive to changes in the price of PCR and would continue to demand fairly constant quantities over a considerably wide range of prices.

### **Substitution Elasticity**

The elasticity of substitution depends upon the extent of product differentiation between the domestic and imported products.<sup>43</sup> Product differentiation, in turn, depends upon such factors as quality and conditions of sale. Based on available information, the elasticity of substitution between domestic and subject PCR is likely to be moderately high and in the range of 3 to 5.

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<sup>40</sup> \*\*\*.

<sup>41</sup> Gates' posthearing brief, pp. 3-4.

<sup>42</sup> A supply function is not defined in the case of a non-competitive market.

<sup>43</sup> The substitution elasticity measures the responsiveness of the relative U.S. consumption levels of the subject imports and the domestic like products to changes in their relative prices. This reflects how easily purchasers switch from the U.S. product to the subject product (or vice versa) when prices change.



## PART III: CONDITION OF THE U.S. INDUSTRY

### U.S. PRODUCER'S CAPACITY, PRODUCTION, AND CAPACITY UTILIZATION

Data on capacity, production, and capacity utilization of DDE, the sole U.S. producer, are presented in table III-1. Reported U.S. capacity of PCR \*\*\* from 1999 to 2004, while production decreased by \*\*\* percent. The capacity utilization rate declined from \*\*\* percent in 1999 to \*\*\* percent in 2003, rebounding to \*\*\* percent in 2004.<sup>1</sup>

**Table III-1**

**PCR: U.S. producer's capacity, production, and capacity utilization, 1999-2004**

\* \* \* \* \*

\*\*\*,<sup>2</sup> \*\*\*.<sup>3</sup>

### U.S. PRODUCER'S DOMESTIC SHIPMENTS, COMPANY TRANSFERS, AND EXPORT SHIPMENTS

As shown in table III-2, the quantity of DDE's U.S. shipments decreased by \*\*\* percent from 1999 to 2004. The value of DDE's U.S. shipments also decreased, by \*\*\* percent, during this period, while the average unit value of such shipments increased by \*\*\* percent. Exports have grown \*\*\*, from \*\*\* percent to \*\*\* percent of the quantity of total shipments and from \*\*\* percent to \*\*\* percent of the value during 1999-2004.

**Table III-2**

**PCR: U.S. producer's shipments, by type, 1999-2004**

\* \* \* \* \*

### U.S. PRODUCER'S INVENTORIES

Data on end-of-period inventories of PCR for the review period are presented in table III-3.

**Table III-3**

**PCR: U.S. producer's end-of-period inventories, 1999-2004**

\* \* \* \* \*

### U.S. PRODUCER'S IMPORTS AND PURCHASES OF IMPORTS

DDE imported the subject products from \*\*\* in Japan during the review period. These imports \*\*\* of production, and \*\*\* when the joint venture was ended in 2002. Table III-4 presents data on the imports and purchases of subject imports of PCR by DDE.

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<sup>1</sup> \*\*\*.

<sup>2</sup> \*\*\*.

<sup>3</sup> \*\*\*.

**Table III-4**

**PCR: U.S. producer's subject imports and purchases of subject imports, by source, 1999-2004**

\* \* \* \* \*

### **U.S. PRODUCER'S EMPLOYMENT, WAGES, AND PRODUCTIVITY**

Data provided by DDE on the number of production and related workers ("PRWs") engaged in the production of PCR and the total hours worked by and wages paid to such PRWs during the period for which data were collected in this review are presented in table III-5. From 1999 to 2004, the number of PRWs decreased by \*\*\* percent, hours worked decreased by \*\*\* percent, and hourly wages increased by \*\*\* percent. Productivity \*\*\* during the review period.

**Table III-5**

**PCR: U.S. producer's average number of production and related workers, hours worked, wages paid to such employees, and hourly wages, productivity, and unit labor costs, 1999-2004**

\* \* \* \* \*

### **FINANCIAL EXPERIENCE OF DDE**

#### **Background**

DDE<sup>4</sup> provided financial data on its operations on PCR. The firm accounted for all known U.S. production of PCR in 2004.

DDE reported several developments relating to restructuring its operations, in particular \*\*\*.<sup>5</sup> Recently, DuPont announced that it \*\*\*.<sup>6</sup> Finally, DDE stated that it will consolidate PCR production at LaPlace, LA, leading to the closure of its plant at Louisville, KY by the end of 2006.<sup>7</sup>

DDE classifies the PCR industry as being in a declining life cycle since the peak in the 1970s, and as a \*\*\*.<sup>8</sup> Further, DDE's analysis indicates that the market for PCR has been \*\*\*.<sup>9</sup> This projection, combined with estimates of economic activity, increasing costs of raw material inputs and natural gas, substitution by other products, and activities of competitors, leads to what DDE calls its \*\*\*.<sup>10</sup> This strategy focuses on \*\*\*.<sup>11</sup> It also includes certain \*\*\*.<sup>12</sup>

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<sup>4</sup> DDE is a joint venture between DuPont and Dow that was formed in 1996, and has a fiscal year end of \*\*\*.

<sup>5</sup> \*\*\*.

<sup>6</sup> DDE's questionnaire response, p. 2.

<sup>7</sup> Hearing transcript, pp. 13, 18, and 33 (Austin). Also, *see* DDE's posthearing brief, exh. 1, p. 27.

<sup>8</sup> DDE's business plan, p. 3. Also, *see* hearing transcript, p. 19 (van Ballegoie). Part of the demand decline is due to substitution for PCR by other products, for example, the substitution of EPDM for PCR in power transmission belts. Demand in the United States for PCR has reportedly fallen at a faster rate than the overall decline in demand.

<sup>9</sup> DDE's business plan, p. 5.

<sup>10</sup> For a further discussion of DDE's business plan, *see* DDE's prehearing brief, pp. 30-31.

<sup>11</sup> DDE's business plan, p. 4. DDE personnel noted at the hearing that the capital project had not been approved. Nonetheless, if the planned capital investment at LaPlace is carried out (and the Louisville plant closed), total production capacity is projected \*\*\*. DDE's posthearing brief, exh. 1, p. 24.

<sup>12</sup> DDE's business plan, pp. 4 and 9. Contrary to this, DDE stated that \*\*\*.

The questionnaire data of DDE were reviewed. DDE provided its internal financial statements, which are compiled for the joint venture. Data in these statements provided the basis for changes made to DDE's income statement, specifically the \*\*\*.<sup>13</sup>

### Operations on PCR

DDE's net sales quantities, values, and gross profits decreased between 1999 and 2003, and increased between 2003 and 2004. Operating \*\*\* fell between 1999 and 2001, increased between 2001 and 2002, and fell \*\*\* between 2002 and 2003 \*\*\*. The operating \*\*\* improved \*\*\* from 2003 to 2004. The change in net sales values was the result of decreased sales quantities that were \*\*\* by increasing average unit values ("AUVs") of sales between 1999 and 2001; sales AUVs fell between 2001 and 2002, but rose between 2002 and 2003 as well as between 2003 and 2004. The AUVs of DDE's export sales, which account for approximately \*\*\* of total sales, are \*\*\* the AUVs of the firm's domestic commercial sales, and while the commercial sales AUVs increased between 1999 and 2004, export AUVs were flat. Reportedly, DDE's exports are of \*\*\*, while its U.S. sales represent \*\*\*.

The declining profitability was the result of costs either not decreasing at the same rate as sales or increasing in value. This is seen in the changes in the ratios of the cost of goods sold ("COGS") and selling, general, and administrative ("SG&A") expenses to total net sales and the AUVs of COGS. Components of costs that increased relatively the most were \*\*\*.<sup>14</sup> Plant overhead, which is part of "other factory costs," is typically composed of fixed costs that generally do not vary according to production; hence, the AUV of fixed plant expenses varies inversely with sales quantity. SG&A expenses include sales salaries, commissions, and freight expenses incurred to ship finished goods, as well as research and development, DDE's management costs, and allocated corporate charges (in this last category charges for \*\*\* accounted for the greatest proportion of total costs because DDE \*\*\* between 2000 and 2001 and implementation costs continued during later periods).

DuPont's 2004 form 10-K contains the following with respect to DDE:

"Authorities in the United States, the European Union, and Canada are investigating the synthetic rubber markets for possible antitrust violations. DDE, a 50/50 joint venture between DuPont and Dow, manufactures two of the synthetic rubber products that are subject to the investigations, polychloroprene (PCP) and ethylene propylene diene monomer (EPDM). DDE has responded to subpoenas in connection with those products and is cooperating with authorities. On January 19, 2005, DDE reached a plea agreement with the U.S. Department of Justice (DOJ) that, if approved by the court, includes an \$84 {million} fine and resolves all criminal charges against DDE related to PCP in the United States.

Related civil litigation is pending against DDE and others, including DuPont. DDE entered into a settlement of federal class action antitrust litigation related to PCP for \$42 {million} including attorney's fees and costs, which was approved by the court in November 2004."<sup>15</sup>

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<sup>13</sup> DDE's questionnaire revisions, filed March 28, 2005.

<sup>14</sup> E-mail from \*\*\*, DDE, March 17, 2005. Also, DDE's business plan stated (p. 11) that \*\*\*. Also, *see* DDE's rehearing brief, pp. 11-12, and 29, and hearing transcript, pp. 20-21 (van Ballegoie).

<sup>15</sup> DuPont 2004 form 10-K, pp. F-30 and F-31 (as filed). The note further describes the arrangement between DuPont and Dow to consolidate control in DuPont over directing DDE's response to the antitrust investigations and litigation; to allocate disproportionately DDE's potential liabilities and costs (including fines, settlements, judgments, penalties, and defense costs) in which DuPont is liable for an amount up to \$150 million; to dissolve the joint venture and effect an asset transfer between the partners, expected to result in DDE changing its name and becoming a wholly owned subsidiary of DuPont on or about June 30, 2005. DuPont is to purchase Dow's interest

(continued...)

According to DDE's prehearing brief and testimony at the hearing, the plea agreement was accepted by the District Court the Northern District of California on March 29, 2005 for the period August 1999 to April 2002.<sup>16</sup> According the agreement, DDE is to pay a fine in the amount of \$84 million in installments. The \*\*\*.<sup>17</sup> DDE reached civil settlements with certain of its customers in June 2004 for the period of 1999 through 2003; it agreed to pay \*\*\* in legal costs (included in "other expense" in table III-6).<sup>18</sup> DDE stated that these antitrust liabilities and fees, including the expenses shown in table III-6, "do not impact DDE's financial performance," as \*\*\*.<sup>19</sup>

Income-and-loss data for DDE on its PCR operations are presented in table III-6.

**Table III-6**  
**PCR: Results of operations of DDE, 1999-2004**

\* \* \* \* \*

### Variance Analysis

The variance analysis showing the effects of prices and volume on DDE's net sales of PCR, and of costs and volume on its total expenses, is presented in table III-7. The information for this variance analysis is derived from table III-6. The variance analysis provides an assessment of changes in profitability as related to changes in pricing, cost, and volume. This analysis is more effective when the product involved is a homogeneous product with no variation in product mix. The analysis is summarized at the bottom of the table and shows that the decrease in operating income from 1999 to 2004 is attributable to the \*\*\* higher net cost/expense variance (higher unit costs) and net volume variance (lower volume) that \*\*\* a favorable price variance (higher unit prices). Between 2001 and 2002, DDE's operating income increased as a favorable net cost/expense variance (lower unit costs) was \*\*\* higher than the combined unfavorable variances on net volume (volume declined) and price (unit prices declined). Between 2002 and 2003, DDE's operating income fell \*\*\* as the unfavorable variance on net cost/expense was \*\*\* higher than the favorable variance on price; between 2003 and 2004, DDE's operating \*\*\* as unit prices rose \*\*\* and \*\*\* unit costs declined. Legal expenses relating to the price fixing in the amount of \$\*\*\* are included in DDE's general and administrative expenses in 2003 and

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<sup>15</sup> (...continued)

that remains after transfer of assets for \$87 million less any loans made to Dow in connection with the antitrust litigation. Finally, DuPont established a reserve of about \$250 million in 2004 to reflect anticipated losses because of the antitrust litigation and its arrangement with Dow (Dow reportedly established a separate reserve of \$18 million). As noted in DDE's posthearing brief, \*\*\* with DuPont's liability limited, as described earlier. *See*, DDE posthearing brief, exh.1, p. 4.

<sup>16</sup> DDE's prehearing brief, p. 13 and exh. 2. Hearing transcript, p. 77 (Gardiner). Also, *see* Department of Justice press release of January 19, 2005, "DuPont Dow Elastomers to plead guilty and pay \$84 million fine for participating in a synthetic rubber cartel," found at Internet site, <http://www.usdoj.gov/atr/public/press-releases/2005/207231.htm>, retrieved on May 10, 2005. Syndial, S.p.A., an Italian company formerly known as Enichem S.p.A, also reached an agreement to cease anticompetitive practices that covered the period of September 1999 to April 2002. *See* Department of Justice press release of May 2, 2005, "Italian company to plead guilty and pay \$9 million fine for participating in polychloroprene rubber cartel," found at Internet site, <http://www.usdoj.gov/atr/public/press-releases/2005/208798.htm>, retrieved on May 10, 2005.

<sup>17</sup> Plea Agreement between the United States and DuPont Dow Elastomers, DDE's prehearing brief, exh. 1.

<sup>18</sup> DDE's posthearing brief, exh. 1, p. 4.

<sup>19</sup> DDE's posthearing brief, exh. 1, pp. 3-4.

<sup>20</sup> Telephone conversation between DuPont counsel and USITC staff, May 25, 2005.

affect operating income, as noted earlier. Excluding this item from the data used in table III-7 reduces the SG&A expense and operating income variances by this amount in 2002-03 and 2003-04.

**Table III-7**

**PCR: Variance analysis on DDE's operations, 1999-2004**

\*                      \*                      \*                      \*                      \*                      \*

### Assets and Return on Investment

The Commission's questionnaire requested data on DDE's assets used in the production, warehousing, and sale of PCR to compute return on investment ("ROI") for 1999 to 2004 (table III-8). The data for total net sales and operating profit or (losses) are from table III-6. Operating income was divided by total net sales, resulting in the operating income ratio. Total net sales was divided by total assets, resulting in the asset turnover ratio. The operating income ratio was then multiplied by the asset turnover ratio, resulting in ROI; the expanded form of this equation shows how the profit margin and total assets turnover ratio interact to determine the return on investment. ROI generally followed operating income as discussed earlier in connection with table III-6.

**Table III-8**

**PCR: Value of assets used in DDE's production, warehousing, and sale, and DDE's return on investment, 1999-2004**

\*                      \*                      \*                      \*                      \*                      \*

### Capital Expenditures and Research and Development Expenses

DDE's data on its capital expenditures and research and development ("R&D") expenses for its PCR operations are shown in table III-9.

**Table III-9**

**PCR: DDE's capital expenditures and research and development expenses, 1999-2004**

\*                      \*                      \*                      \*                      \*                      \*

According to DDE's business plan (including actual spending for 2002 and earlier), the focus of capital expenditures has been on \*\*\*.<sup>21</sup>

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<sup>21</sup> DDE's business plan, p. 10.





## PART IV: U.S. IMPORTS AND THE INDUSTRY IN JAPAN

### U.S. IMPORTS

U.S. imports of PCR during 1999-2004, as reported by Commerce,<sup>1</sup> are presented in table IV-1; coverage of imports by responses to the importer's questionnaire was not complete. Total imports fluctuated during the period of review, with the quantity being 17 percent higher in 2004 than in 1999 and the value being 30 percent higher. U.S. imports from Japan also fluctuated; they were between approximately 2 percent and 5 percent of the quantity of total PCR imports during the period of review, and accounted for 3 percent of the quantity of U.S. imports in 2004.

**Table IV-1**  
**PCR: U.S. imports, by source, 1999-2004**

Source	Calendar year					
	1999	2000	2001	2002	2003	2004
<b>Quantity (1,000 pounds)</b>						
Japan	613	1,060	1,629	2,052	688	1,183
All other sources	32,889	37,885	38,368	40,783	40,092	37,875
Total	33,503	38,944	39,997	42,836	40,779	39,058
<b>Value (\$1,000)</b>						
Japan	1,155	2,184	3,121	4,097	1,678	2,768
All other sources	34,700	39,977	41,845	43,797	43,890	43,729
Total	35,856	42,162	44,967	47,894	45,568	46,497
<b>Unit value (per pound)</b>						
Japan	\$1.88	\$2.06	\$1.92	\$2.00	\$2.44	\$2.34
All other sources	1.06	1.06	1.09	1.07	1.09	1.15
Total	1.07	1.08	1.12	1.12	1.12	1.19
Source: Compiled from official Commerce statistics.						

The unit value of imports from Japan remained consistently higher than that of other imports by a substantial margin, and rose in 2003 after the DDE joint venture was terminated.

For the years 1999-2002, imports at fair value (from *de minimis*-margin sources) accounted for \*\*\* percent of U.S. imports of PCR from Japan. After the joint venture between DDE and Showa Denki was dissolved in 2002, the share of imports that was at fair value rose to \*\*\* percent of the quantity in 2004 and \*\*\* percent of the value (table IV-2).

<sup>1</sup> Products subject to this review are covered by HTS subheadings 4002.41.00, 4002.49.00, and 4003.00.00. For purposes of the import data reported herein, only the first two subheadings have been included. Commission staff has determined that the preponderance of imports in HTS subheading 4003.00.00 are of rubber types other than polychloroprene, based on a telephone conversation with \*\*\*.

**Table IV-2**  
**PCR: U.S. imports from Japan, 1999-2004**

Source	1999	2000	2001	2002	2003	2004
	Quantity (1,000 pounds)					
Denki	***	***	***	***	***	***
All other	***	***	***	***	***	***
Total, Japan	613	1,060	1,629	2,053	688	1,183
Denki as a share of total ( <i>percent</i> )	***	***	***	***	***	***
Value (\$1,000) <sup>1</sup>						
Denki	***	***	***	***	***	***
All other	***	***	***	***	***	***
Total, Japan	1,155	2,184	3,121	4,097	1,678	2,678
Denki as a share of total ( <i>percent</i> )	***	***	***	***	***	***
<sup>1</sup> Landed value, f.o.b. U.S. port, excluding any antidumping duties. Source: Compiled from data submitted in response to Commission questionnaires and from official Commerce statistics.						

### U.S. IMPORTERS' INVENTORIES

Table IV-3 shows importers' yearend inventories during the period of review and the ratio of inventories to imports during the preceding year. These inventories accounted for \*\*\* percent of U.S. imports in 2004.

**Table IV-3**  
**PCR: U.S. importers' yearend inventories of product from Japan, 1999-2004**

\* \* \* \* \*

### THE INDUSTRY IN JAPAN

There are three known producers of PCR in Japan: Denki, SDK, and TOSOH.<sup>2</sup> All three producers were sent foreign producer questionnaires. Denki provided only its exports by source. SDK did not respond. DDE supplied information for its joint venture during the years 1999-2002.

Total capacity to produce PCR in Japan is about 230 million pounds in solid and latex forms, of which Denki accounts for about 50 percent, TOSOH 30 percent, and SDK 20 percent.<sup>3</sup> According to DDE, Japanese producers of PCR expanded their production capacity by almost \*\*\* percent during 1977-

<sup>2</sup> \*\*\* after 1999.

<sup>3</sup> IISRP, "Worldwide Rubber Statistics 2004."

99 while worldwide demand was declining and while non-Japanese production capacity declined by almost \*\*\* percent during the same period.<sup>4</sup> Data for 1999-2004 are presented in table IV-4.

**Table IV-4**

**PCR: Japan's production, exports, consumption, capacity, and capacity utilization rates (1999-2004)**

(Quantity=1,000 pounds; rate=percent)

Calendar year	Production <sup>1</sup>	Exports <sup>2</sup>	Apparent domestic consumption <sup>3</sup>	Capacity <sup>4</sup>	Capacity utilization rate
1999	186,980	131,252	55,728	216,053	87
2000	203,947	136,122	67,825	216,053	94
2001	188,821	128,895	59,926	216,053	87
2002	192,269	142,654	49,615	216,053	89
2003	209,485	153,014	56,471	231,485	90
2004	NA	168,574	NA	NA	NA
<sup>1</sup> The Synthetic Rubber Industry Association of Japan, courtesy SRI International, Menlo Park, CA. Excludes latex. <sup>2</sup> World Trade Atlas, courtesy SRI International, Menlo Park, CA. <sup>3</sup> Calculated as the difference between production and exports; in practice, imports are believed to average about 7 million pounds annually, but recent data are not available. <sup>4</sup> Worldwide Rubber Statistics, International Institute of Synthetic Rubber Producers, Inc. (IISRP), Houston, TX. The capacity increase shown in 2003 was due to an expansion by Denki.					

From 1999 to 2003, Japanese production of PCR increased by 3 percent annually, exports increased by 6 percent annually from 1999-2004, and capacity increased by 2 percent annually, while apparent domestic consumption appears to have remained relatively flat. The average sustainable capacity utilization rate was 89 percent.

In 2004, Japan shipped PCR to about 45 countries, of which 10 countries accounted for about 83 percent of the total.<sup>5</sup> The top ten destinations in order of importance were China, Belgium, Taiwan, Korea, Thailand, Hong Kong, India, Indonesia, Spain, and Brazil. China accounted for 15 percent of the total, while Brazil accounted for 3 percent of the total. Brazilian shipments accounted for 2 percent of the total during the 1999-2003 period, increasing to 3 percent of the total in 2004.<sup>6</sup> In contrast, shipments to China rose from 10 percent of the total in 1999 to 15 percent in 2004.<sup>7</sup>

According to SDEM, data from the Japanese Synthetic Rubber Association for the first three quarters of 2002 showed that total demand for PCR in Japan was 47.7 million pounds during those three

<sup>4</sup> \*\*\*.

<sup>5</sup> World Trade Atlas.

<sup>6</sup> DDE argues that there has been aggressive pricing behavior by Japan in foreign markets, especially Brazil. During the early period of the sunset review (1999-2000), DDE claims to have had a very significant market share of about 50 percent in the adhesive segment in Brazil; this allegedly declined to about 25 to 35 percent during the period of the sunset review; the volume share lost by DDE was allegedly picked up by the Japanese PCR suppliers, Denki and the others as well. Hearing transcript, pp. 31-32 (van Ballegoie).

<sup>7</sup> "DDE has further shown that the Japanese have bought their way into other markets at below cost prices, most notably in Brazil." Hearing transcript, p. 6 (Lipstein).

quarters. This demand was equivalent to only 30 percent of the total Japanese capacity available. \*\*\* alleges that Japanese suppliers would have ample volumes of PCR available for export in the event the antidumping finding were revoked.<sup>8</sup>

Denki, \*\*\* Japanese producer, uses an \*\*\*. The usual production process involves the reaction of coal or coke with limestone in an electric furnace to produce calcium carbide, followed by the reaction of calcium carbide with water to form acetylene. Acetylene, in turn, is converted to monovinyl acetylene, which is then reacted with hydrochloric acid to form chloroprene monomer.<sup>9 10</sup>

\*\*\*.<sup>11 12</sup>

The former joint venture between SDK and DDE continues to operate, in part as a means to \*\*\*. Also, SDK is known to have recently \*\*\*.<sup>13</sup> SDK reportedly uses a form of \*\*\*.<sup>14</sup>

DDE contends that Japanese producers continue to maintain significant production capacity despite a decline in demand for PCR in Japan and globally. It also contends that Japanese producers must export most of their PCR production to maintain acceptable levels of capacity utilization.

The IISRP estimates that there were 538 million pounds of PCR produced worldwide in 2003, the latest year for which data are available, of which 174 million pounds were produced in Asia and Oceania, including Japan.

### ANTIDUMPING INVESTIGATIONS IN THIRD COUNTRIES

China recently announced the results of its own antidumping investigation of PCR.<sup>15</sup> The investigation covered not only Japanese exporters, but also DDE and the European producers. China determined that the dumping margin for “all other U.S. producers,” that is, DDE, was 151 percent. The margin for Denki was set at 2 percent and for TOSOH at 3 percent. The “all others” rate for Japan, presumably including SDK, was 151 percent. The margin on Lanxess was 32 percent and the margin on Polimeri was 53 percent. The effect of the antidumping duty order in China should be to make China an even more attractive opportunity for the two Japanese producers because they will have a distinct advantage over DDE and European producers.<sup>16</sup>

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<sup>8</sup> \*\*\*.

<sup>9</sup> Ibid.

<sup>10</sup> Denki reportedly has its \*\*\*. \*\*\*.

<sup>11</sup> E-mail response from \*\*\*.

<sup>12</sup> TOSOH reportedly has \*\*\*. \*\*\*.

<sup>13</sup> E-mail response from \*\*\*.

<sup>14</sup> E-mail response from \*\*\*.

<sup>15</sup> People’s Daily Online, “China Imposes Anti-dumping Tariff on Imported Neoprene,” May 11, 2005, found at [http://english.people.com.cn/200505/11/eng20050511\\_184561.html](http://english.people.com.cn/200505/11/eng20050511_184561.html).

<sup>16</sup> Gates’ posthearing brief, p. 5.

## **PART V: PRICING AND RELATED INFORMATION**

### **FACTORS AFFECTING PRICES**

#### **Raw Materials**

DDE's manufacturing process requires raw material inputs of butadiene, caustic soda, and chlorine, while it uses natural gas for energy. While costs of these inputs have fluctuated dramatically, they are generally up \*\*\*. From the fourth quarter of 2002 to the first quarter of 2005, the cost of butadiene was up \*\*\* percent, chlorine by almost \*\*\* percent, caustic soda had almost \*\*\*, and natural gas had increased by almost \*\*\* percent.

Raw material costs as a share of total cost of goods sold fluctuated in the range of \*\*\* to \*\*\* percent over 1999-2004, and were \*\*\* percent in 2004, which would reflect the continuing escalation of raw material costs.

#### **Transportation Costs to the U.S. Market**

Transportation costs for PCR from Japan to the United States (excluding U.S. inland costs) in 2004 are estimated to be equivalent to approximately 6 percent of the customs value for product from Japan. These estimates are derived from official import data and represent the transportation and other charges on imports valued on a c.i.f. basis, as compared with customs value.<sup>1</sup>

#### **U.S. Inland Transportation Costs**

DDE estimated that U.S. inland transportation costs for PCR have ranged between \*\*\* percent and \*\*\* percent for both its domestic shipments and its imports from Japan. Importer \*\*\* estimated U.S. inland transportation costs for PCR to be \*\*\* percent, while \*\*\* reported inland transportation costs of \*\*\* percent.

DDE reported that its market is \*\*\* and that \*\*\* percent of its domestic and imported shipments are to customers less than 1,000 miles away. The customer customarily arranges for shipment. There are special handling requirements because the PCR is sold in small chips which are packaged in paper sacks. These sacks cannot be stacked beyond a certain height or the weight of the sacks will compact and produce an unusable solid mass. The sacks are shipped most often by truck, domestically, on single pallets, or in containers for shipment overseas.

\*\*\* reported that approximately \*\*\* percent of its U.S. shipments of PCR were less than 1,000 miles, and \*\*\* percent more than 1,000 miles. \*\*\* reported that \*\*\* percent of its shipments were less than 100 miles from its U.S. storage facility, and the balance less than 1,000 miles. Both \*\*\* reported that they arranged the shipping for their customers.

#### **Exchange Rates**

Quarterly real and nominal exchange rates reported by the IMF for the Japanese yen against the U.S. dollar during the period January 1999 to December 2004 are shown in figure V-1.<sup>2</sup>

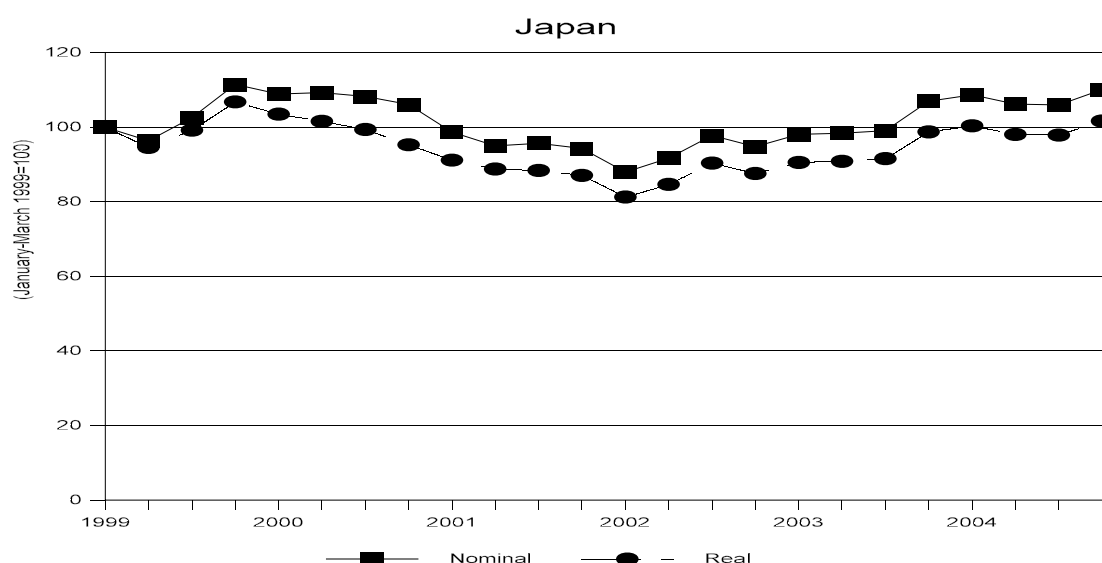
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<sup>1</sup> These estimates are based on HTS subheadings 4002.41.00 and 4002.49.00.

<sup>2</sup> Real exchange rates are nominal exchange rates adjusted for inflation.

**Figure V-1**

**Exchange rates: Indices of the nominal and real exchange rates of the Japanese yen relative to the U.S. dollar, by quarters, January 1999-December 2004**



Source: International Monetary Fund, *International Financial Statistics* online, <http://ifs.apdi.net/imf>, retrieved March 21, 2005.

### PRICING PRACTICES<sup>3</sup>

DDE reported that \*\*\* percent of its sales of PCR in 2004 were on a spot basis. The rest were long-term contracts. DDE operates from a published price list for these transactional customers. Prices are negotiated for \*\*\*. DDE reported that about \*\*\* percent of its business with large, strategic customers is by annual or multi-year contracts. Prices depend on \*\*\*. DDE's top five customers account for approximately \*\*\* percent of its domestic business. DDE provides \*\*\*.

\*\*\* sells on a transaction-by-transaction or contract basis. Prices are determined by negotiation for \*\*\*. Sales \*\*\* are on a \*\*\*. Long-term contracts are for \*\*\*, and prices are set by the contract, \*\*\*. \*\*\* also sells on a \*\*\*. \*\*\* sales are \*\*\* percent from inventory.

### PRICE DATA

The Commission requested U.S. producers and importers of PCR to provide quarterly data for the total quantity and f.o.b. values of PCR that were shipped to unrelated customers in the U.S. market. Data were requested for the period January 1999 to December 2004. The products for which pricing data were requested are as follows:

**Product 1.**--PCR for industrial goods; a sulfur-modified type with Mooney viscosity 36 to 55, equivalent to DuPont Dow type GRT or Denka type PS40, in solid "chips."

**Product 2.**--PCR for industrial goods, with low temperature resistance, high crystallization resistance, Mooney viscosity 43 to 53, equivalent to DuPont Dow type WRT or Denka type S-40V, in solid "chips."

<sup>3</sup> Also see earlier discussion on price fixing, p. II-2.

**Product 3.**--PCR for general purpose solvent-based adhesives, equivalent to DuPont Dow type AD or Denka type A.

**Product 4.**--PCR equivalent to DuPont Dow type SND35 or Denka type DCR35, in solid "chips."

DDE provided usable pricing data for sales of the requested domestic products. By quantity, pricing data reported by DDE accounted for approximately \*\*\* percent of its shipments of domestically produced PCR in 2004. DDE, as the importer of record, also provided pricing data for its sales of imported product from Japan. All the imports from Japan for which prices were reported received a zero antidumping duty rate under Commerce's administrative review, but were still technically subject to the antidumping finding. In April 2004, DDE began producing \*\*\*.

### Price Trends

DDE's prices for PCR fluctuated \*\*\* and there were no apparent trends in prices (table V-1). \*\*\* for reported prices of imports at fair value (table V-2).

### Price Comparisons

There are no price comparisons between domestic product and subject imports. DDE's imports of PCR from Japan for product 4 are presented. These imports received a zero antidumping duty rate.

**Table V-1**

**PCR: Weighted-average f.o.b. prices and quantities of domestic products 1, 2, 3, and 4, by quarters, January 1999-December 2004**

\* \* \* \* \*

**Table V-2**

**PCR: Weighted-average f.o.b. prices and quantities of imported product 4 from Japan, by quarters, January 1999-December 2004**

\* \* \* \* \*





**APPENDIX A**

***FEDERAL REGISTER* NOTICES**  
**AND THE COMMISSION'S STATEMENT ON ADEQUACY**



a U.S. or foreign trade or business association, or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in this review by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the antidumping duty order on the Domestic Industry in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in section 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of Subject Merchandise on the Domestic Industry.

(5) A list of all known and currently operating U.S. producers of the Domestic Like Product. Identify any known related parties and the nature of the relationship as defined in section 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the Subject Merchandise and producers of the Subject Merchandise in the Subject Country that currently export or have exported Subject Merchandise to the United States or other countries after 1998.

(7) If you are a U.S. producer of the Domestic Like Product, provide the following information on your firm's operations on that product during calendar year 2003 (report quantity data in pounds and value data in U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the Domestic Like Product accounted for by your firm's(s') production;

(b) the quantity and value of U.S. commercial shipments of the Domestic Like Product produced in your U.S. plant(s); and

(c) the quantity and value of U.S. internal consumption/company transfers of the Domestic Like Product produced in your U.S. plant(s).

(8) If you are a U.S. importer or a trade/business association of U.S. importers of the Subject Merchandise from the Subject Country, provide the following information on your firm's(s') operations on that product during

calendar year 2003 (report quantity data in pounds and value data in U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping or countervailing duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of Subject Merchandise from the Subject Country accounted for by your firm's(s') imports;

(b) the quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. commercial shipments of Subject Merchandise imported from the Subject Country; and

(c) the quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. internal consumption/company transfers of Subject Merchandise imported from the Subject Country.

(9) If you are a producer, an exporter, or a trade/business association of producers or exporters of the Subject Merchandise in the Subject Country, provide the following information on your firm's(s') operations on that product during calendar year 2003 (report quantity data in pounds and value data in U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping or countervailing duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of Subject Merchandise in the Subject Country accounted for by your firm's(s') production; and

(b) the quantity and value of your firm's(s') exports to the United States of Subject Merchandise and, if known, an estimate of the percentage of total exports to the United States of Subject Merchandise from the Subject Country accounted for by your firm's(s') exports.

(10) Identify significant changes, if any, in the supply and demand conditions or business cycle for the Domestic Like Product that have occurred in the United States or in the market for the Subject Merchandise in the Subject Country after 1998, and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the

use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the Domestic Like Product produced in the United States, Subject Merchandise produced in the Subject Country, and such merchandise from other countries.

(11) (Optional) A statement of whether you agree with the above definitions of the Domestic Like Product and Domestic Industry; if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

**Authority:** This review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to § 207.61 of the Commission's rules.

Issued: June 23, 2004.

By order of the Commission.

**Marilyn R. Abbott,**

*Secretary to the Commission.*

[FR Doc. 04-14985 Filed 6-30-04; 8:45 am]

**BILLING CODE 7020-02-P**

## INTERNATIONAL TRADE COMMISSION

[Investigation No. AA1921-129 (Second Review)]

### Polychloroprene Rubber From Japan

**AGENCY:** United States International Trade Commission.

**ACTION:** Institution of a five-year review concerning the multidumping finding on polychloroprene.

**SUMMARY:** The Commission hereby gives notice that it has instituted a review pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)) (the Act) to determine whether revocation of the antidumping finding on polychloroprene rubber from Japan would be likely to lead to continuation or recurrence of material injury. Pursuant to section 751(c)(2) of the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission;<sup>1</sup> to be assured of

<sup>1</sup> No response to this request for information is required if a currently valid Office of Management and Budget (OMB) number is not displayed; the OMB number is 3117-0016/USITC No. 04-5-092, expiration date June 30, 2005. Public reporting burden for the request is estimated to average 7 hours per response. Please send comments

consideration, the deadline for responses is August 20, 2004. Comments on the adequacy of responses may be filed with the Commission by September 14, 2004. For further information concerning the conduct of this review and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts, A, D, E, and F (19 CFR part 207).

**EFFECTIVE DATE:** July 1, 2004.

**FOR FURTHER INFORMATION CONTACT:**

Mary Messer (202-205-3193), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202-205-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-205-2000. General information concerning the Commission may also be obtained by accessing its Internet server (<http://www.usitc.gov>). The public record for this review may be viewed on the Commission's electronic docket (EDIS) at <http://edis.usitc.gov>.

**SUPPLEMENTARY INFORMATION:**

**Background.** On December 6, 1973, the Department of the Treasury issued an antidumping finding on imports of polychloroprene rubber from Japan (30 FR 33593). Following five-year reviews by Commerce and the Commission, effective August 6, 1999, Commerce issued a continuation of the antidumping finding on imports of polychloroprene rubber from Japan (64 FR 47765, September 1, 1999). The Commission is now conducting a second review to determine whether revocation of the finding would be likely to lead continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. It will assess the adequacy of interested party responses to this notice of institution to determine whether to conduct a full review or an expedited review will be based on the facts available, which may include information provided in response to this notice.

**Definitions.** The following definitions apply to this review:

(1) *Subject Merchandise* is the class or kind of merchandise that is within the

scope of the five-year review, as defined by the Department of Commerce.

(2) *The Subject Country* in this review is Japan.

(3) *The Domestic Like Product* is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the Subject Merchandise. In its original determination and its full five-year review determination, the Commission effectively defined the Domestic Like Product as all polychloroprene rubber.

(4) *The Domestic Industry* is the U.S. producers as a whole of the Domestic Like Product, or those producers whose collective output of the Domestic Like Product constitutes a major proportion of the total domestic production of the product. In its original determination and its full five-year review determination, the Commission defined the Domestic Industry as all producers of polychloroprene rubber.

(5) An *Importer* is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the Subject Merchandise into the United States from a foreign manufacturer or through its selling agent.

**Participation in the review and public service list.** Persons, including industrial users of the Subject Merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the review as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register**. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the review.

Former Commissioner employees who are seeking to appear in Commission five-year reviews are reminded that they are required, pursuant to 19 CFR 201.15, to seek Commission approval if the matter in which they are seeking to appear was pending in any manner or form during their Commission employment. The Commission is seeking guidance as to whether a second transition five-year review is the "same particular matter" as the underlying original investigation for purposes of 19 CFR 201.15 and 18 U.S.C. 207, the post employment statute for Federal employees. Former employees may seek informal advice from Commission ethics officials with respect to this and the related issue of whether the employee's participation was "personal and

substantial." However, any informal consultation will not relieve former employees of the obligation to seek approval to appear from the Commission under its rule 201.15. For ethics advice, contact Carol McCue Verratti, Deputy Agency Ethics Official, at 202-205-3088.

**Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and APO service list.** Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in this review available to authorize applicants under the APO issued in the review, provided that the application is made no later than 21 days after publication of this notice in the FR. Authorized applicants must represent interested parties, as defined in 19 U.S.C. 1677(9), who are parties to the review. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

**Certification.** Pursuant to § 207.3 of the Commission's rules, any person submitting information to the Commission in connection with this review must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will be determined to consent, unless otherwise specified, for the Commission, its employees, and contract personnel to use the information provided in any other reviews or investigations of the same or comparable products which the Commission conducts under Title VII of the Act, or in internal audits and investigations relating to the programs and operations of the Commission pursuant to 5 U.S.C. Appendix 3.

**Written submissions.** Pursuant to § 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is August 20, 2004. Pursuant to § 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct an expedited or full review. The deadline for filing such comments is September 14, 2004. All written submissions must conform with the provisions of §§ 201.8 and 207.3 of the Commission's rules and any submissions that contain BPI must also conform with the requirements of §§ 201.6 and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic

regarding the accuracy of this burden estimate to the Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436.

means, except to the extent permitted by § 201.8 of the Commission's rules, as amended, 67 FR 68036 (November 8, 2002). Also, in accordance with §§ 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the review must be served on all other parties to the review (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the review you do not need to serve your response).

*Inability to provide requested information.* Pursuant § 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to section 776(b) of the Act in making its determination in the review.

*Information to be Provided in Response to This Notice of Institution:* As used below, the term "firm" includes any related firms.

(1) The name and address of your firm or entity (including World Wide Web address if available) and name, telephone number, fax number, and E-mail address of the certifying official.

(2) A statement indicating whether your firm/entity is a U.S. producer of the Domestic Like Product, a U.S. union or worker group, a U.S. importer of the Subject Merchandise, a foreign producer or exporter of the Subject Merchandise, a U.S. or foreign trade or business association, or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in this review by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the antidumping finding on the Domestic Industry in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in section 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of

subject imports, likely price effects of subject imports, and likely impact of imports of Subject Merchandise on the Domestic Industry.

(5) A list of all known and currently operating U.S. producers of the Domestic Like Product. Identify any known related parties and the nature of the relationship as defined in section 771(4)(B) of the act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the Subject Merchandise and producers of the Subject Merchandise in the Subject Country that currently export or have exported Subject Merchandise to the United States or other countries after 1998.

(7) If you are a U.S. producer of the Domestic Like Product, provide the following information on your firm's operations on that product during calendar year 2003 (report quantity data in pounds and value data in U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the Domestic Like Product accounted for by your firm's(s') production;

(b) The quantity and value of U.S. commercial shipments of the Domestic Like Product produced in your U.S. plants(s); and

(c) The quantity and value of U.S. internal consumption/company transfers of the Domestic Like Product produced in your U.S. plant(s).

(8) If you are a U.S. importer or a trade/business association of U.S. importers of the Subject Merchandise from the Subject Country, provide the following information on your firm's(s') operations on that product during calendar year 2003 (report quantity data in pounds and value data in U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping or countervailing duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of Subject Merchandise from the Subject Country accounted for by your firm's(s') imports;

(b) The quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. commercial shipments of Subject

Merchandise imported from the Subject Country; and

(c) The quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. internal consumption/company transfers of Subject Merchandise imported from the Subject Country.

(9) If you are a producer, an exporter, or a trade/business association of producers or exporters of the Subject Merchandise in the Subject Country, provide the following information on your firm's(s') operations on that product during calendar year 2003 (report quantity data in pounds and value data in U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping or countervailing duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of Subject Merchandise in the Subject Country accounted for by your firm's(s') production; and

(b) The quantity and value of your firm's(s') exports to the United States of Subject Merchandise and, if known, an estimate of the percentage of total exports to the United States of Subject Merchandise from the Subject Country accounted for by your firm's(s') exports.

(10) Identify significant changes, if any, in the supply and demand conditions or business cycle for the Domestic Like Product that have occurred in the United States or in the market for the Subject Merchandise in the Subject Country after 1998, and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of the competition among the Domestic Like Product produced in the United States, Subject Merchandise produced in the Subject Country, and such merchandise from other countries.

(11) (Optional) A statement of whether you agree with the above definitions of the Domestic Like Product

and Domestic Industry; if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

**Authority:** This review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.61 of the Commission's rules.

Issued: June 23, 2004.

By order of the Commission.

**Marilyn R. Abbott,**

*Secretary to the Commission.*

[FR Doc. 04-14986 Filed 6-30-04; 8:45 am]

**BILLING CODE 7020-02-M**

## DEPARTMENT OF JUSTICE

### Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation and Liability Act

Under 28 CFR 50.7, notice is hereby given that on June 17, 2004, a proposed consent decree in *United States v. Dart Container Corporation of Pennsylvania, et al.*, Civil Action No. 04-2208, was lodged with the United States District Court for the Eastern District of Pennsylvania.

In this action the United States is seeking response costs pursuant to the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. 9601 *et seq.*, in connection with the Walsh Landfill (a/k/a the Welsh Road and Barkman Landfill) Superfund Site ("Site"), the Honey Brook Township, Chester and Lancaster Counties, Pennsylvania ("Site"). The proposed consent decree will resolve the United States' claims against Dart Container Corporation of Pennsylvania, Penguin Industries, Inc., and Reeves Brothers, Inc. ("Settling Defendants") in connection with the Walsh Landfill Superfund Site. Under the terms of the proposed consent decree, the Settling Defendants will pay \$413,206.00 to the Hazardous Substance Superfund in reimbursement of response costs, to address their liability for the Site and will receive a covenant not to sue by the United States with regard to the Site.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, PO Box 7611, U.S. Department of Justice, Washington, DC 20044-7611, and should refer to *United States v. Dart Container Corporation of Pennsylvania, et al.*, D.J. Ref. 90-11-2-612/4.

The proposed consent decree may be examined at the Clerk's Office, U.S. District Court, Eastern District of Pennsylvania, U.S. Courthouse, Room 2609, 601 Market Street, Philadelphia, PA 19106-1797, and at U.S. EPA Region III, 1650 Arch Street, Philadelphia, PA 19103. During the public comment period, the proposed consent decree may also be examined on the following Department of Justice Web site: <http://www.usdoj.gov/enrd/open.html>. A copy of the proposed consent decree may also be obtained by mail from the Consent Decree Library, PO Box 7611, U.S. Department of Justice, Washington, DC 20044-7611 or by faxing or e-mailing a request to Tonia Fleetwood ([tonia.fleetwood@usdoj.gov](mailto:tonia.fleetwood@usdoj.gov)), fax no. (202) 514-0097, phone confirmation number (202) 514-1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of \$5.25 (25 cents per page reproduction cost) payable to the U.S. Treasury.

**Robert D. Brook,**

*Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.*

[FR Doc. 04-14887 Filed 6-30-04; 8:45 am]

**BILLING CODE 4410-15-M**

## DEPARTMENT OF JUSTICE

### Notice of Lodging of Consent Decree Under the Clean Water Act, Oil Pollution Act and Mississippi Air and Water Pollution Control Law

Notice is hereby given that on June 24, 2004, a proposed Consent Decree ("Decree") in *United States and The Mississippi Commission on Environmental Quality v. Genesis Energy, Inc., Genesis Crude Oil, L.P., and Genesis Pipeline USA, L.P.* (S.D. Miss.), Civil Action No. 2:04cv217BN, was lodged with the United States District Court for the Southern District of Mississippi.

In this action, the United States and the State of Mississippi ("State") sought the assessment of penalties under the Clean Water Act and Mississippi Air and Water Pollution Control Law ("MAWPCL"), and restoration and compensation for injuries and losses to natural resources under the Oil Pollution Act and MAWPCL, due to the discharge in 1999 of approximately 336,000 gallons of crude oil from a ruptured pipeline owned and operated by Defendants and located near Soso, Jones County, Mississippi. The Decree provides for Defendants to pay a \$1 million civil penalty, of which \$500,000 is to be paid to the United States and \$500,000 is to be paid to the State, and

for Defendants to perform a land acquisition and conservation supplemental environmental project at a cost of at least \$2 million. In addition, the Decree provides for Defendants to conduct natural resource restoration projects, and to pay at least \$110,137.57 to Federal and State natural resource trustees for costs of associated oversight, a wood duck nesting project, and past natural resource damages assessment costs.

The Department of Justice will receive for a period of fifteen (15) days from the date of this publication comments relating to the Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, PO Box 7611, U.S. Department of Justice, Washington, DC 20044-7611, and should refer to *United States and The Mississippi Commission on Environmental Quality v. Genesis Energy, Inc., Genesis Crude Oil, L.P., and Genesis Pipeline USA, L.P.* (S.D. Miss.), D.J. Ref. 90-5-1-1-07553.

The Decree may be examined at the Office of the United States Attorney, 188 E. Capitol St., Jackson, Mississippi 39201, and at U.S. EPA Region 4, Atlanta Federal Center, 61 Forsyth Street, SW., Atlanta, Georgia 30303-3104. During the public comment period, the Decree may also be examined on the following Department of Justice Web site, <http://www.usdoj.gov/enrd/open.html>. A copy of the Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044-7611 or by faxing or e-mailing a request to Tonia Fleetwood ([tonia.fleetwood@usdoj.gov](mailto:tonia.fleetwood@usdoj.gov)), fax no. (202) 514-0097, phone confirmation number (202) 514-1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of \$39.75 (25 cents per page reproduction cost) payable to the U.S. Treasury. In requesting a copy exclusive of exhibits, please enclose a check in the amount of \$10.50 (25 cents per page reproduction cost) payable to the U.S. Treasury.

**W. Benjamin Fisherow,**

*Deputy Chief, Environmental Enforcement Section, Environment and Natural Resources Division.*

[FR Doc. 04-14976 Filed 6-30-04; 8:45 am]

**BILLING CODE 4410-15-M**

Minerals Management Service, 949 East 36th Avenue, Room 330, Anchorage, Alaska 99508-4302. Telephone: (907) 271-6070 or 1-800-764-2627. Certain documents may be viewed and downloaded from the MMS World Wide Web site at <http://www.mms.gov/alaska>.

The final Notice of Sale will be published in the **Federal Register** at least 30 days prior to the date of bid opening. Bid opening is currently scheduled for March 30, 2005.

Dated: October 8, 2004.

**R.M. "Johnnie" Burton,**

*Director, Minerals Management Service.*

[FR Doc. 04-23269 Filed 10-15-04; 8:45 am]

**BILLING CODE 4310-MR-P**

## INTERNATIONAL TRADE COMMISSION

[Investigation No. AA1921-129 (Second Review)]

### Polychloroprene Rubber From Japan

**AGENCY:** United States International Trade Commission.

**ACTION:** Notice of Commission determination to conduct a full five-year review concerning the antidumping finding on polychloroprene rubber from Japan.

**SUMMARY:** The Commission hereby gives notice that it will proceed with a full review pursuant to section 751(c)(5) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(5)) to determine whether revocation of the antidumping finding on polychloroprene rubber from Japan would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. A schedule for the review will be established and announced at a later date. For further information concerning the conduct of this review and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

**EFFECTIVE DATE:** October 4, 2004.

#### FOR FURTHER INFORMATION CONTACT:

Mary Messer (202-205-3193), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202-205-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office

of the Secretary at 202-205-2000. General information concerning the Commission may also be obtained by accessing its internet server (<http://www.usitc.gov>). The public record for this review may be viewed on the Commission's electronic docket (EDIS) at <http://edis.usitc.gov>.

**SUPPLEMENTARY INFORMATION:** On October 4, 2004, the Commission determined that it should proceed to a full review in the subject five-year review pursuant to section 751(c)(5) of the Act. The Commission found that the domestic interested party group response to its notice of institution (69 FR 39905, July 1, 2004) was adequate and that the respondent interested party group response to its notice of institution was inadequate. The Commission also found that other circumstances warranted conducting a full review.<sup>1</sup> A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements will be available from the Office of the Secretary and at the Commission's Web site.

**Authority:** This review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to § 207.62 of the Commission's rules.

Issued: October 12, 2004.

By order of the Commission.

**Marilyn R. Abbott,**

*Secretary to the Commission.*

[FR Doc. 04-23203 Filed 10-15-04; 8:45 am]

**BILLING CODE 7020-02-P**

## INTERNATIONAL TRADE COMMISSION

[USITC SE-04-027]

### Sunshine Act Meeting

**AGENCY HOLDING THE MEETING:** United States International Trade Commission.

**TIME AND DATE:** October 21, 2004 at 2 p.m.

**PLACE:** Room 101, 500 E Street SW., Washington, DC 20436, Telephone: (202) 205-2000.

**STATUS:** Open to the public.

#### MATTERS TO BE CONSIDERED:

1. Agenda for future meetings: None.
2. Minutes
3. Ratification List
4. Inv. No. 731-TA-1088 (Preliminary) (Polyvinyl Alcohol from Taiwan)—briefing and vote. (The Commission is currently scheduled to transmit its determination to the Secretary of Commerce on or before

<sup>1</sup> Chairman Stephen Koplan dissenting.

October 22, 2004; Commissioners' opinions are currently scheduled to be transmitted to the Secretary of Commerce on or before October 29, 2004.)

#### 5. Outstanding action jackets:

(1) Document No. GC-04-114 concerning proposed rulemaking and changes in Agency procedures.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

Issued: October 13, 2004.

By order of the Commission.

**Marilyn R. Abbott,**

*Secretary to the Commission.*

[FR Doc. 04-23359 Filed 10-14-04; 11:16 am]

**BILLING CODE 7020-02-P**

## DEPARTMENT OF JUSTICE

[AAG/A ORDER NO. 013-2004]

### Privacy Act of 1974; System of Records

Pursuant to the provisions of the Privacy Act of 1974, as amended (5 U.S.C. 552a), notice is given that the Criminal Division (CRM), Department of Justice, proposes to establish a new system of records entitled "Organized Crime Drug Enforcement Task Force Fusion Center System," Justice/CRM-028, which covers the records maintained by the Organized Crime Drug Enforcement Task Force Fusion Center, Executive Office for the Organized Crime Drug Enforcement Task Force, Criminal Division.

In accordance with 5 U.S.C. 552a (e)(4) and (11), the public is given a 30-day period in which to comment; the Office of Management and Budget (OMB), which has oversight responsibility of the Act, requires a 40-day period in which to conclude its review of the system. Therefore, please submit any comments by November 17, 2004. The public, OMB, and Congress are invited to submit comments to Mary Cahill, Management and Planning Staff, Justice Management Division, Department of Justice, Washington, DC 20530 (1400 National Place Building).

In accordance with 5 U.S.C. 552a (r), the Department has provided a report to OMB and Congress.

time limit for the preliminary results) from the date of the publication of the preliminary results. *See also* 19 CFR 351.213(h)(2).

### Background

On August 22, 2003, the Department published a notice of initiation of the antidumping duty order on certain pasta from Italy, covering the period July 1, 2002, to June 30, 2003 (68 FR 50750). On March 17, 2004, the Department fully extended the preliminary results of the review by 120 days (69 FR 12641). On August 6, 2004, the Department published the preliminary results of its review (69 FR 47880). The final results of this review are currently due no later than December 6, 2004.

### Extension of Final Results of Reviews

We determine that it is not practicable to complete the final results of this review within the original time limit because the Department needs additional time to fully consider parties' arguments regarding the application of facts available with respect to Barilla Alimentare, S.p.A., and certain respondents' proposed modifications to the wheat codes. Therefore, we are extending the deadline for the final results of the above-referenced review until February 2, 2005.

This extension is in accordance with section 751(a)(3)(A) of the Act and 19 CFR 351.213(h)(2).

Dated: October 29, 2004.

Jeffrey A. May,

Deputy Assistant Secretary for Import Administration.

[FR Doc. E4-3011 Filed 11-3-04; 8:45 am]

BILLING CODE 3510-DS-P

## DEPARTMENT OF COMMERCE

### International Trade Administration

[A-588-046]

### Polychloroprene Rubber From Japan: Final Results of the Expedited Sunset Review of the Antidumping Duty Finding

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Notice of final results of the expedited sunset review of the antidumping duty finding: polychloroprene rubber from Japan.

**SUMMARY:** On July 1, 2004, the Department of Commerce ("the Department") initiated a sunset review of the antidumping duty finding on certain polychloroprene rubber from

Japan.<sup>1</sup> On the basis of the notice of intent to participate and substantive comments filed on behalf of the domestic interested party, and inadequate response (in this case waiver of participation) from respondent interested parties, the Department determined to conduct an expedited sunset review of the antidumping duty finding pursuant to section 751(c)(3)(B) of the Tariff Act of 1930, as amended ("the Act") and section 351.218(e)(1)(ii)(C)(2) of the Department's regulations.<sup>2</sup> As a result of this sunset review, the Department determined that revocation of the antidumping duty finding would be likely to lead to continuation or recurrence of dumping at the levels listed below in the section entitled "Final Results of Review".

**EFFECTIVE DATE:** November 4, 2004.

**FOR FURTHER INFORMATION CONTACT:** Martha V. Douthit, Office of Policy, Import Administration, U.S. Department of Commerce, 14th Street & Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482-5050.

### SUPPLEMENTARY INFORMATION:

#### Background

On July 1, 2004, the Department initiated a sunset review of the antidumping duty finding on polychloroprene rubber from Japan in accordance with section 751(c) of the Act. *See Notice of Initiation*, 69 FR 39905 (July 1, 2004).

The Department received a Notice of Intent to Participate within the applicable deadline specified in section 351.218(d)(1)(i) of the Department's regulations on behalf of DuPont Dow Elastomers L.L.C. ("DDE").<sup>3</sup> DDE claimed interested party status as a domestic producer of polychloroprene rubber from Japan.

The Department received complete substantive responses from the domestic interested party within the 30-day deadline specified in the Department's regulations under section 351.218(d)(3)(i). However, the Department did not receive adequate responses from respondent interested parties to this proceeding. As a result,

<sup>1</sup> *See Initiation of Five-Year ("Sunset") Reviews*, 69 FR 39905 (July 1, 2004) ("Notice of Initiation").

<sup>2</sup> The Department received a statement of waiver of participation of the five-year sunset review from Showa Denko L.L.C. ("SDK"). *See* letter to James J. Jochum, Assistant Secretary for Import Administration, July 30, 2004.

<sup>3</sup> DDE stated that it succeeds E.I. DuPont de Nemours & Company ("DuPont"), Petitioner in this antidumping proceeding. DuPont was the original Petitioner in the original investigation of polychloroprene rubber from Japan.

pursuant to section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(C)(2), the Department conducted an expedited sunset review of this antidumping duty finding.

### Scope of the Antidumping Duty Finding

Imports covered by this sunset review are shipments of polychloroprene rubber, an oil resistant synthetic rubber also known as polymerized chlorobutadiene or neoprene, currently classifiable under items 4002.42.00, 4002.49.00, 4003.00.00, 4462.15.21 and 4462.00.00 of the Harmonized Tariff Schedule ("HTS"). The HTS item numbers are provided for convenience and customs purposes. The written descriptions remain dispositive.

### Analysis of Comments Received

All issues raised in this sunset review are addressed in the "Issues and Decision Memorandum" ("Decision Memo") from Ronald K. Lorentzen, Acting Director, Office of Policy, Import Administration, to James J. Jochum, Assistant Secretary for Import Administration, dated October 29, 2004, which is hereby adopted by this notice. The issues discussed in the Decision Memo include the likelihood of continuation or recurrence of dumping and the magnitude of the margin likely to prevail if the antidumping duty finding were revoked. Parties can find a complete discussion of all issues raised in this sunset review and the corresponding recommendations in this public memorandum, which is on file in room B-099 of the main Commerce Building.

In addition, a complete version of the Decision Memo can be accessed directly on the Web at <http://ia.ita.doc.gov/frn>, under the heading "November 2004". The paper copy and electronic version of the Decision Memo are identical in content.

### Final Results of Review

The Department determines that revocation of the antidumping duty finding on polychloroprene rubber from Japan would be likely to lead to continuation or recurrence of dumping at the following weighted-average margins:

Manufacturers/producers/exporters	Weighted-average margin (percent)
Denki Kagaku Kogyo K.K. ....	0.00
Denki Kagaku Kogyo, K.K./Hoei Sangyo Co., Ltd. ....	55.00
Suzugo Corporation. ....	55.00
All Others. ....	55.00



This notice also serves as the only reminder to parties subject to administrative protective orders ("APO") of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of the return or destruction of APO materials or conversion to judicial protective order is requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing the results and notice in accordance with sections 751(c), 752, and 777(i)(1) of the Act.

Dated: October 29, 2004.

**James J. Jochum,**

*Assistant Secretary for Import Administration.*

[FR Doc. E4-3014 Filed 11-3-04; 8:45 am]

BILLING CODE 3510-DS-P

## DEPARTMENT OF COMMERCE

### International Trade Administration

[C-423-809]

#### **Stainless Steel Plate in Coils From Belgium; Final Results of the Expedited Sunset Review of the Countervailing Duty Order**

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Notice of final results of expedited sunset review: Stainless steel plate in coils from Belgium.

**SUMMARY:** On April 1, 2004, the Department initiated a sunset review of the countervailing duty ("CVD") order on stainless steel plate in coils ("SSPC") from Belgium pursuant to section 751(c) of the Tariff Act of 1930, as amended ("the Act"). See Initiation of Five-Year (Sunset) Reviews, 69 FR 17129 (April 1, 2004). On the basis of a notice of intent to participate and an adequate substantive response filed on behalf of domestic interested parties and inadequate response from respondent interested parties, the Department conducted an expedited (120-day) sunset review. As a result of this review, the Department finds that revocation of the CVD order would likely lead to continuation or recurrence of subsidies at the levels indicated in the "Final Results of Review" section of this notice.

**EFFECTIVE DATE:** November 4, 2004.

**FOR FURTHER INFORMATION CONTACT:** Hilary Sadler, Esq., Office of Policy for

Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482-4340.

#### **SUPPLEMENTARY INFORMATION:**

##### **Department's Regulations**

The Department's procedures for the conduct of sunset reviews are set forth in 19 CFR 351.218. Guidance on methodological or analytical issues relevant to the Department's conduct of sunset reviews is set forth in the Department's Policy Bulletin 98.3—Policies Regarding the Conduct of Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin, 63 FR 18871 (April 16, 1998).

##### **Background**

On April 1, 2004, the Department initiated a sunset review of the CVD order on SSPC from Belgium pursuant to section 751(c) of the Act. See Initiation of Five-Year (Sunset) Reviews, 69 FR 17129 (April 1, 2004). On April 16, 2004, the Department received a notice of intent to participate from Allegheny Ludlum Corp. ("Allegheny Ludlum"), North America Stainless ("NAS"), and the United Steelworkers of America, AFL-CIO/CLC ("USWA"), (collectively, "domestic interested parties") within the applicable deadline specified in section 351.218(d)(1)(i) of the Sunset Regulations. See Response of the Domestic Interested Parties at 2, May 3, 2004 ("Domestic Response"). All domestic interested parties claimed interested-party status, under sections 771(9)(C) and (D) of the Act, as a U.S. producer of the domestic like product or a certified union whose workers are engaged in the production of the subject merchandise in the United States. See Domestic Response. The USWA was a petitioner in the investigation and has been involved in this proceeding since its inception. *Id.* at 6. Armo, Inc., J&L Specialty Steels, Inc., and Lukens Inc. were also petitioners in the original investigation but are either no longer producers of subject merchandise or are scheduled to cease production of SSPC this year. *Id.* According to the domestic interested parties in this review, two unions, Butler Armco Independent Union and Zanesville Armco Independent Organization, that were original petitioners are not participating in this sunset review because very few workers at these unions are engaged in the production of SSPC in the United States. *Id.* at 7. The domestic interested parties have participated as a group at various segments of this order. *Id.*

The Department received a waiver of participation from U & A Belgium, a respondent interested party. See Response of U & A Belgium, "SSPC from Belgium—Sunset Participation Waiver" (April 30, 2004). We did receive substantive responses from the Government of Flanders and the Government of Belgium (collectively, "GOB") and the Delegation of the European Commission ("EU"). See Substantive Response of the GOB, ("GOB Response") (May 3, 2004) and the Substantive Response of the EU ("EU Response") (April 30, 2004). In addition, the GOB and the domestic industry submitted rebuttals on May 10, 2004. See Rebuttal of the Domestic Interested Parties ("Domestic Rebuttal") (May 10, 2004) and GOB Rebuttal (May 10, 2004).

As a result of the lack of respondent company participation in this sunset review, pursuant to section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(C)(2), the Department conducted an expedited (120-day) sunset review of this order. See Memorandum to Ronald K. Lorentzen, Acting Office of Policy Director, from Kelly Parkhill, Director of Industry and Support, Sunset Review of Stainless Steel Plate in Coils from Belgium: Adequacy of Respondent Interested Party Responses to the Notice of Initiations (May 19, 2004).

##### **Scope of Review**

The product covered by this order is certain stainless steel plate in coils. Stainless steel is an alloy steel containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. The subject plate products are flat-rolled products, 254 mm or over in width and 4.75 mm or more in thickness, in coils, and annealed or otherwise heat treated and pickled or otherwise descaled. The subject plate may also be further processed (e.g., cold-rolled, polished, etc. provided that it maintains the specified dimensions of plate following such processing. Excluded from the scope of these orders are the following: (1) Plate not in coils, (2) plate that is not annealed or otherwise heat treated and pickled or otherwise descaled, (3) sheet and strip, and (4) flat bars. In addition, certain cold-rolled stainless steel plate in coils is also excluded from the scope of this order. The excluded cold-rolled stainless steel plate in coils is defined as that merchandise which meets the physical characteristics described above that has undergone a cold-reduction process that reduced the thickness of the steel by 25 percent or more, and has

17, 2004, issued an order (Order No. 9), requiring complainants to show cause why the investigation should not be terminated as to TsingTao U.S. due to a failure to prosecute. On November 19, 2004, complainants responded to Order No. 9, stating that their efforts to locate TsingTao U.S. have proven unsuccessful, and that they therefore do not oppose termination of the investigation as to that respondent. On December 2, 2004, the ALJ issued an ID (Order No. 11), terminating the investigation as to TsingTao U.S. No petitions for review of the ID were filed.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in § 210.42 of the Commission's Rules of Practice and Procedure (19 CFR 210.42).

By order of the Commission.

Issued: December 27, 2004.

**Marilyn R. Abbott,**

*Secretary to the Commission.*

[FR Doc. 04-28634 Filed 12-29-04; 8:45 am]

BILLING CODE 7020-02-P

## INTERNATIONAL TRADE COMMISSION

[Investigation No. AA1921-129 (Second Review)]

### Polychloroprene Rubber From Japan

**AGENCY:** United States International Trade Commission.

**ACTION:** Scheduling of a full five-year review concerning the antidumping duty order on polychloroprene rubber from Japan.

**SUMMARY:** The Commission hereby gives notice of the scheduling of a full review pursuant to section 751(c)(5) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(5)) (the Act) to determine whether revocation of the antidumping duty order on polychloroprene rubber from Japan would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. For further information concerning the conduct of this review and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

**EFFECTIVE DATE:** December 22, 2004.

**FOR FURTHER INFORMATION CONTACT:** John Kitzmiller (202-205-3387), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain

information on this matter by contacting the Commission's TDD terminal on 202-205-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-205-2000. General information concerning the Commission may also be obtained by accessing its Internet server (<http://www.usitc.gov>). The public record for this review may be viewed on the Commission's electronic docket (EDIS) at <http://edis.usitc.gov>.

#### SUPPLEMENTARY INFORMATION:

**Background.** On October 4, 2004, the Commission determined that it should proceed to a full review in the subject five-year review pursuant to section 751(c)(5) of the Act. The Commission found that the domestic interested party group response to its notice of institution (69 FR 39905, July 1, 2004) was adequate and that the respondent interested party group response to its notice of institution was inadequate. The Commission also found that other circumstances warranted conducting a full review.<sup>1</sup> A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements are available from the Office of the Secretary and at the Commission's Web site.

**Participation in the review and public service list.** Persons, including industrial users of the subject merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in this review as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, by 45 days after publication of this notice. A party that filed a notice of appearance following publication of the Commission's notice of institution of the review need not file an additional notice of appearance. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the review.

**Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.** Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in this review available to authorized applicants under the APO issued in the review, provided that the application is made by 45 days after publication of this notice. Authorized applicants must represent interested parties, as defined

by 19 U.S.C. 1677(9), who are parties to the review. A party granted access to BPI following publication of the Commission's notice of institution of the review need not reapply for such access. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

**Staff report.** The prehearing staff report in the review will be placed in the nonpublic record on April 13, 2005, and a public version will be issued thereafter, pursuant to section 207.64 of the Commission's rules.

**Hearing.** The Commission will hold a hearing in connection with the review beginning at 9:30 a.m. on May 3, 2005, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before April 26, 2005. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on April 28, 2005, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by sections 201.6(b)(2), 201.13(f), 207.24, and 207.66 of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony *in camera* no later than 7 days prior to the date of the hearing.

**Written submissions.** Each party to the review may submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of section 207.65 of the Commission's rules; the deadline for filing is April 22, 2005. Parties may also file written testimony in connection with their presentation at the hearing, as provided in section 207.24 of the Commission's rules, and posthearing briefs, which must conform with the provisions of section 207.67 of the Commission's rules. The deadline for filing posthearing briefs is May 12, 2005; witness testimony must be filed no later than three days before the hearing. In addition, any person who has not entered an appearance as a party to the review may submit a written statement of information pertinent to the subject of the review on or before May 12, 2005. On June 3, 2005, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before June 7, 2005, but such final

<sup>1</sup> Chairman Stephen Koplan dissenting.

comments must not contain new factual information and must otherwise comply with section 207.68 of the Commission's rules. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's rules, as amended, 67 FR 68036 (November 8, 2002).

Additional written submissions to the Commission, including requests pursuant to section 201.12 of the Commission's rules, shall not be accepted unless good cause is shown for accepting such submissions, or unless the submission is pursuant to a specific request by a Commissioner or Commission staff.

In accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the review must be served on all other parties to the review (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

**Authority:** This review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

By order of the Commission.  
Issued: December 23, 2004.

**Marilyn R. Abbott,**

*Secretary to the Commission.*

[FR Doc. 04-28588 Filed 12-29-04; 8:45 am]

**BILLING CODE 7020-02-P**

## DEPARTMENT OF LABOR

### Office of the Solicitor; Agency Information Collection Activities: Proposed Collection; Comment Request; Equal Access to Justice Act

**ACTION:** Notice.

**SUMMARY:** The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995. See 44 U.S.C. 3506(c)(2)(A). The program helps to ensure that requested data can be provided in the desired format,

reporting burden (time and financial resources) is minimized, collection instruments are understood clearly, and the impact of the collection requirements on respondents can be assessed properly. Currently the Office of the Solicitor is soliciting comments concerning the proposed extension of the information collection required in applications to obtain awards in administrative proceedings subject to the Equal Access to Justice Act.

**DATES:** Written comments must be submitted by February 28, 2005.

**ADDRESSES:** Comments are to be submitted to the Department of Labor, Office of Solicitor, Attn: April Nelson, 200 Constitution Avenue, NW., (Room N-2428), Washington, DC 20210. Written comments limited to 10 pages or fewer may be transmitted by facsimile to (202) 693-5539.

**FOR FURTHER INFORMATION CONTACT:** Contact April Nelson, Office of Solicitor, telephone (202) 693-5782. Copies of the referenced information collection request are available in room N-1301, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. The collection request and applicable supporting documentation may be obtained by contacting Darrin King by telephone at (202) 693-4129 or by e-mail at [king.darrin@dol.gov](mailto:king.darrin@dol.gov).

#### SUPPLEMENTARY INFORMATION:

#### I. Background

The Equal Access to Justice Act (EAJA) provides for the award of fees and expenses, under certain circumstances, to parties involved in adversary adjudications with the United States. 5 U.S.C. 504. The statute, at 5 U.S.C. 504(a)(2), requires that a party seeking an award of fees and expenses in a covered proceeding must submit to the agency "an application which shows that the party is the prevailing party and is eligible to receive an award" under EAJA.

The Department of Labor's regulations at 29 CFR Part 16 implement EAJA, and 29 CFR 16.201 sets forth the required elements of an EAJA award application. Under this regulation, EAJA award applications must include information regarding the following: The identity of the applicant, the proceeding for which an award is sought, the fact that the applicant has prevailed, the agency position alleged not to be substantially justified, the number of employees of the applicant at the time the proceeding was instituted (if the applicant is other than an individual), the type and purpose of the applicant's organization or business (if applicable), net worth and/or other designated information,

and amounts requested. Certain certifications, affidavits and other documents also are required. See 29 CFR 16.201-16.204 for a complete description of information required from applicants.

#### II. Desired Focus of Comments

The Department of Labor is interested in comments particularly in order to:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

#### III. Current Action

This notice requests an extension of the current Office of Management and Budget (OMB) approval of the paperwork requirements for the contents of applications for an award under the Equal Access to Justice Act.

**Type of Review:** Extension of a currently approved collection of information.

**Agency:** Office of the Solicitor.

**Title:** Equal Access to Justice Act.

**OMB Number:** 1225-0013.

**Affected Public:** Individuals or households; Business or other for-profit; Not-for-profit institutions; Federal government; State, local or tribal government.

**Number of Respondents:** 10.

**Frequency:** On occasion.

**Total Responses:** 10.

**Average Time per Response:** 5 hours.

**Estimated Total Burden Hours:** 50 hours.

**Total annualized capital/startup costs:** \$0.

**Total Annualized costs (operation and maintenance):** \$0.

Comments submitted in response to this notice will be summarized and may be included in the request for OMB approval of the final information collection request. The comments will become a matter of public record.

**EXPLANATION OF COMMISSION DETERMINATION ON ADEQUACY**  
in  
*Polychloroprene Rubber from Japan*, Inv. No. AA1921-129 (Second Review)

On October 4, 2004, the Commission determined that it should conduct a full review in the subject five-year review pursuant to section 751(c)(5) of the Tariff Act of 1930, as amended, 19 U.S.C. § 1675(c)(5).<sup>1</sup>

The Commission received a response to the notice of institution from the only domestic producer of polychloroprene rubber: DuPont Dow Elastomers L.L.C. (“DDE”). The Commission determined that the response was individually adequate. The Commission also determined that the response was an adequate domestic interested party group response because DDE accounts for all domestic production of the like product.

The Commission did not receive a response from any respondent interested party. Consequently, the Commission determined that the respondent interested party group response was inadequate.

The Commission received submissions from four U.S. purchasers of polychloroprene rubber. These purchasers, who urged the Commission to conduct a full review, noted that in the almost 30 years that the antidumping duty order on polychloroprene rubber has been in place, there have been many changes in the composition of the domestic industry; in the conditions of competition; in the uses for the product; and in the competitive positions of producers, importers and purchasers of the product. In light of these changes, the Commission found that circumstances warranted conducting a full review.

A record of the Commissioners’ votes is available from the Office of the Secretary and the Commission’s web site (<http://www.usitc.gov>).

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<sup>1</sup> Chairman Koplan dissented from this determination to conduct a full review.

## **APPENDIX B**

### **LIST OF WITNESSES AT THE COMMISSION'S HEARING**



## CALENDAR OF PUBLIC HEARING

Those listed below appeared as witnesses at the United States International Trade Commission's hearing:

**Subject:** Polychloroprene Rubber from Japan  
**Inv. No.:** AA1921-129 (Second Review)  
**Date and Time:** May 3, 2005 - 9:30 a.m.

Sessions were held in connection with this investigation in the Main Hearing Room, 500 E Street (room 101), SW, Washington, DC.

### **CONGRESSIONAL WITNESS**

**The Honorable Malcolm Melancon, U.S. Congressman, 3<sup>rd</sup> District, State of Louisiana**

### **OPENING REMARKS:**

In Support of the Continuation of the Antidumping Finding - **Robert Lipstein**, Crowell & Moring LLP

### **In Support of the Continuation of the Antidumping Finding:**

Crowell & Moring LLP  
Washington, DC  
on behalf of

DuPont Dow Elastomers L.L.C. ("DDE")

**Jane E. Austin**, Global Business Director, Chloroelastomers, DDE  
**Peter van Ballegooie**, Global Marketing Manager, Neoprene, DDE  
**Mary Jane Castellano**, Business Analyst Consultant, DDE  
**Denis McCrea**, Neoprene Technical Associate, DDE  
**Marilyn Bromels**, Counsel, DDE

**Robert A. Lipstein--OF COUNSEL**  
**Kent A. Gardiner**  
**Matthew P. Jaffe**  
**Sobia Haque**

**In Support of the Revocation of the Antidumping Finding:**

Schuchat, Herzog & Brenman, LLC  
Denver, CO  
on behalf of

Gates Corp. (“Gates”)

**John Rusnack**, Manager, Strategic Planning and Implementation, Gates  
**Howard Hurwitz**, Counsel, Gates

**Frank J. Schuchat**--OF COUNSEL

**REBUTTAL/CLOSING REMARKS**

In Support of the Continuation of the Antidumping Finding - **Robert Lipstein**, Crowell & Moring LLP



**APPENDIX C**  
**SUMMARY TABLE**



**Table C-1**  
**PCR: Summary data concerning the U.S. market, 1999-2004**

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## **APPENDIX D**

### **RESPONSES ON THE EFFECTS OF THE ANTIDUMPING FINDING AND THE LIKELY EFFECTS OF REVOCATION**



**U.S. PRODUCER’S COMMENTS REGARDING THE EFFECTS OF THE ANTIDUMPING  
FINDING AND THE LIKELY EFFECTS OF REVOCATION**

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**U.S. IMPORTERS’ COMMENTS REGARDING THE EFFECTS OF THE ANTIDUMPING  
FINDING AND THE LIKELY EFFECTS OF REVOCATION**

\* \* \* \* \*

**U.S. PURCHASERS’ COMMENTS REGARDING THE EFFECTS OF THE ANTIDUMPING  
FINDING AND THE LIKELY EFFECTS OF REVOCATION**

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